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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, TREASURER,
PETITIONER,

vs.

THE TEXAS COMPANY (P. R.), INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 22, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1937.

No. 3380.

THE TEXAS COMPANY (P.R.) Inc.,

PLAINTIFF, APPELLANT,

v.

RAFAEL SANCHO BONET, Treasurer,

DEFENDANT, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO,
FROM JUDGMENT, FEBRUARY 11, 1938.

TRANSCRIPT OF RECORD.

JAMES R. BEVERLEY,
ROUNDS, DILLINGHAM, MEAD & NEAGLE,
for Appellant.

WILLIAM CATTRON RIGBY,
for Appellee.

BOSTON:
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1938

TABLE OF CONTENTS.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1937.

No. 3380.

THE TEXAS COMPANY (P. R.) INC.,
PLAINTIFF, APPELLANT,
v.
RAFAEL SANCHO BONET, TREASURER,
DEFENDANT, APPELLEE.

TRANSCRIPT OF RECORD.

[FILED IN CIRCUIT COURT OF APPEALS AUGUST 24, 1938.]

IN THE DISTRICT COURT OF SAN JUAN, PUERTO RICO.

CIVIL CASE NO. 26,252.

THE TEXAS COMPANY (P. R.), INC., PLAINTIFF,
v.
RAFAEL SANCHO BONET, TREASURER OF PUERTO RICO, DEFENDANT.

INJUNCTION.

BILL OF INJUNCTION.

Now comes plaintiff by her [*sic*] attorneys subscribing this bill and respectfully shows:

1. That plaintiff is a corporation organized under the laws of this Island with principal offices in this city, engaged in the wholesale business of buying and selling products derived from petroleum, in which business it employs, and actually employed during the dates to which this bill refers, besides its office personnel, various laborers, all of which were insured under the laws in regard to workmen's compensation in force at the dates later referred herein.

2. That defendant is the Treasurer of Puerto Rico, duly appointed and confirmed, and having taken his oath of office, being now sued in his official character as such.

3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921 (p. 491), that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premium, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926.

4. That on February 12, 1926, Rodulfo Suarez, Isidro Villoch and Isidro Perez, laborers employed by plaintiff, died as a result of an accident incident to their work which occurred while they were working together with other laborers, as employees of plaintiff, in a concrete platform by the side of a warehouse and wharf belonging to plaintiff in the harbor of Guayanilla, Puerto Rico, the usual employment of deceased being to help in the embarkment and disembarkment of gasoline drums, the filling of same, placing them in order, and cleaning the warehouse and platform, receiving from plaintiff for said work daily wages fluctuating from $1.50 to $1.75. Said accident occurred in the following manner: About 8 o'clock in the morning of said day, as deceased were cleaning the said platform from earth and stones that had fallen upon it by the side of a natural wall formed by earth, the upper part of said wall land-slided causing said workmen injuries of such a nature that they were retrieved dead.

5. That the Workmen's Relief Commission investigated said accident and after holding public hearings in the three cases, on April 24, 1928, arbitrarily and illegally handed down orders declaring that plaintiff was not an insured employer, although it was a matter of record in the said Commission that plaintiff was insured, having

complied with all the requisites of the law as above alleged and having paid the premium corresponding to the year within which said accident occurred; and by said orders awarded compensations of $2,000 to the dependents of each of the deceased and ordained its administrative secretary to prepare the corresponding liquidations and to send to the Attorney General of Puerto Rico a copy of each one of the orders so that said officer proceed, under Section 7 of the law then in force (Act No. 102 of 1925), to collect from plaintiff payment of the resulting amounts.

6. That the liquidations made by the administrative secretary of the Commission were as follows:

Case of Rodulfo Suarez.

Compensation for death	$2,000.00
Administrative expenses, 12 percent	240.00
Total	$2,240.00
Less advances made by the employer	45.33
Total	$2,194.67

Case of Isidro Villoch.

Compensation for death	$2,000.00
Administrative expenses, 12 percent	240.00
Total	$2,240.00

Case of Isidro Perez.

Compensation for death	$2,000.00
Administrative expenses, 12 percent	240.00
Total	$2,240.00

7. That on June 2, 1928, plaintiff filed in this Honorable Court three classical certioraris numbered 6986, 6987 and 6988, which were dismissed by judgments entered on July 23, 1928, because of lack of jurisdiction, remanding the cases to the Workmen's Relief Commission, therein to continue their course as provided by law, said judgments having been affirmed for the same reason by the Honorable Supreme Court of Puerto Rico by judgments entered on January 23, 1930, that were not appealed to the Circuit Court of Boston.

8. That between the dates of April 24, 1928 and September 14,

1936, the Workmen's Relief Commission, nor its successor, the Industrial Commission of Puerto Rico, nor the Attorney General of Puerto Rico, made any attempt to collect the compensations awarded by the above referred orders, and no legal action has been started to collect same under Section 7 of the Workmen's Accident Compensation Act No. 102 of 1925.

9. That on September 14, 1936, the present Industrial Commission of Puerto Rico handed down an order in the case of Rodulfo Suarez requesting defendant, Treasurer of Puerto Rico, to levy an attachment upon properties of plaintiff to collect thus the compensation awarded to the beneficiaries of said laborer plus the expenses had, making a total according to the liquidation, of $2,194.67; and the defendant, Treasurer of Puerto Rico, after requesting plaintiff to pay and threatening with summarily attaching her property, on October 27, 1936, attached summarily a truck belonging to plaintiff which is indispensable to plaintiff in the conduction and delivery of gasoline sold; and said defendant notified further to plaintiff that if on November 6, 1936, plaintiff did not pay said amount plus $1 costs, the attachment levied would be executed, selling at public sale the property attached; defendant intending said execution, which will cause plaintiff grave injury and irreparable damages, unless this Honorable Court grants plaintiff a restraining order and the injunction prayed for in this bill, it being the intention of the Industrial Commission and of the defendant, Treasurer of Puerto Rico, to follow an identical course in the collection of the other two compensations, unless this court enjoins the collection in the way herein prayed for.

10. That the request made by the Industrial Commission to the Treasurer of Puerto Rico by its order of September 14, 1936 as well as the acts of the defendant, Treasurer of Puerto Rico, in trying to collect the aforesaid compensations by a summary administrative attachment as before described, is illegal, arbitrary and abusive for the following reasons:

(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and

from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925.

(b) Because even admitting for the sake of argument that said orders were legal and valid, according to their very text and to Section 7 of Act No. 102 of 1925, the procedure to be followed to collect a compensation awarded by reason of an accident to a workman of an uninsured employer, is to report the order to the Attorney General of Puerto Rico for "institution of proper action, in a court of competent jurisdiction against said employer to recover the aforesaid sum"; the Industrial Commission of Puerto Rico and the Attorney General of Puerto Rico being obliged to follow said procedure, as clearly ordained by the present Workmen's Compensation Law, Act No. 45, passed April 18, 1935, Section 34, of which reads as follows:

> "Section 34. The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

(c) Because Section 36 of Act No. 85 of 1928, under which the defendant, Treasurer of Puerto Rico, intends to find justification for his acts, is applicable exclusively to workmen's accidents occurring after the passage of said law and while the same was in force; and said law has been expressly repealed by Act No. 45 of 1935, and especially by Section 34 of said law as above transcribed.

(d) Because in accordance with Section 13 of Act No. 102 of 1925, which was in force at the time of the occurrence of the aforementioned accident, in case plaintiff should have given false reports to the Commission in the statement it filed on July 15, 1925,—which we emphatically deny—the only recourse of

the Commission would have been to bring a criminal action against plaintiff and hold it responsible for three times the difference between the premium paid and the premium it should have paid.

(e) Because the orders of the Workmen's Relief Commission of April 24, 1928, are in the nature of final judgments, and in accordance with the Code of Civil Procedure of Puerto Rico no judgment can be executed five years after it has become final, which term has expired with excess in these three cases; and the Workmen's Relief Commission and its successor have been negligent (laches) in bringing proceedings to collect the compensations awarded by the same.

11. Plaintiff alleges that there not existing an adequate remedy at law, and the treasurer not intending to collect a tax herein, the remedy of payment under protest is not available, and if this Honorable Court does not enjoin by injunction the collection by distraint as intended by the defendant and allows him to sell in public sale the attached property of plaintiff and other property that he might attach in the collection of the other two compensations, plaintiff will suffer irreparable damages, will be deprived of its property without due process of law and will be obliged to pay compensations it does not have, and never had to pay under any law.

Wherefore, to this Honorable Court plaintiff respectfully prays that in due course a judgment be handed down sustaining this bill of injunction and decreeing a permanent injunction enjoining the treasurer himself or by his agents, employees or inferior officers from depriving plaintiff of its possession of the attached property; from taking, transferring or intervening in any form whatsoever with said property; from advertising for sale and selling in public sale the said attached property; from attaching any other property of plaintiff in collecting the said compensations; from collecting from plaintiff the said compensations awarded by orders of April 24, 1928 to the beneficiaries of Rodulfo Suarez, Isidro Villoch and Isidro Perez, and granting plaintiff any other remedy that might be proper to protect its rights against the illegal acts of the defendant, charging him with the costs, expenses and legal fees of lawyers of plaintiff.

Plaintiff further prays that during the pendency of this suit, this court decree a preliminary injunction to the same effects, after plaintiff files the corresponding bond to guarantee defendant, Treasurer of Puerto Rico, of all the damages that he might suffer in case that plaintiff be not entitled to the injunction prayed for.

Plaintiff further prays that pending the resolution as to the preliminary injunction, this Honorable Court decree a restraining order enjoining defendant, Treasurer of Puerto Rico, himself, or by his agents, employees or inferior officers from depriving plaintiff of the possession of the attached property; or from intervening in any form whatsoever with said property, or from advertising the sale or from selling at public sale the same; or from attaching any other property of plaintiff in collecting the compensations and administrative expenses awarded by the Workmen's Relief Commission by orders of April 24, 1928 to the beneficiaries of the deceased workmen Rodulfo Suarez, Isidro Villoch and Isidro Perez.

San Juan, Puerto Rico, November 5, 1936.

R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
by R. CASTRO FERNANDEZ,
Attorneys for Plaintiff.

OATH.

Gus Marbe, under oath deposes and says: that he is the general manager of plaintiff; that he has read the foregoing petition; that the facts alleged are true having knowledge of them by information that he deems correct; except the facts alleged in regard to the attachment levied, of which he has personal knowledge.

GUS MARBE.

Sworn to and subscribed before me by Mr. Gus Marbe, of age, married, merchant and a resident of this city, to me personally known in San Juan, Puerto Rico, today, November 5, 1936.

JOSE LOPEZ BARALT,
Notary Public.

Affidavit No. 368.
Filed in the Clerk's office, today, November 5, 1936.

[Same Title:]

WRIT OF PRELIMINARY INJUNCTION.

ORDER.

Defendant was duly notified of the restraining order and to show cause given by this court on November 6, 1936, in which he was requested to appear before this court on November 13, 1936, at 9 A. M. to show cause why the preliminary injunction should not be granted as prayed for by plaintiff in this case. It appears from the service of the writ given that this was notified to defendant together with a copy of the bill on proper time.

At the hearing plaintiff was the only party present. Defendant did not appear, although he was duly notified. Plaintiff prayed the court to issue the preliminary injunction based on the sworn bill inasmuch as defendant had not appeared to show cause why the same should not be decreed.

And the court now, having studied the sworn bill of injunction and being of the opinion that the same contains a good and sufficient cause of action against defendant, does hereby grant to petitioner the preliminary injunction prayed for, and in its consequence enjoins the Treasurer of Puerto Rico *pendente lite* and until something different be ordered by this court, *per se*, or by means of his agents, employees and inferior officers, from depriving petitioner of the possession of the attached property, or from intervening in any form whatsoever with said property, or from advertising for sale or selling in public sale the same, or from attaching any other property of plaintiff in collecting the compensations and administrative expenses awarded by the Workmen's Relief Commission by orders of April 24, 1928, to the beneficiaries of the deceased workmen Rodulfo Suarez, Isidro Villoch and Isidro Perez.

And the court now grants defendant a term of ten days in which to answer the bill of injunction, with notice that if he does not do so, plaintiff will be at liberty to enter his default and thereby obtain a permanent writ of injunction, if entitled to it.

The clerk will issue the corresponding writ as soon as plaintiff files and this court approves a bond in the sum of $1,000 to guarantee

the Treasurer of Puerto Rico of the damages that this preliminary injunction might cause him if it be decided finally that plaintiff is not entitled to same.

San Juan, Puerto Rico, November 17, 1936.

C. LLAUGER DIAZ.

[Same Title.]

DEMURRER.

Now appears defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, represented by his attorneys, the Attorney General of Puerto Rico and the Assistant Attorney General, and against the bill of injunction herein, files the following demurrer:

That the bill does not contain sufficient facts to constitute a cause of action.

Wherefore defendant respectfully prays from this court to dismiss the bill of injunction.

San Juan, Puerto Rico, December 7, 1936.

B. FERNANDEZ GARCIA,
Attorney General.

EMILIO DE ALDREY,
Assistant Attorney General.

Served with copy, this seventh day of December, 1936.

JOSE LOPEZ BARALT,
Attorney for Plaintiff.

[Same Title.]

ORDER.

In this case a bill of injunction was filed and an order to show cause was entered, defendant did not appear, and then the court decreed the preliminary injunction under the corresponding bond. Defendant then filed a demurrer alleging that the bill does not contain sufficient facts to constitute a cause of action. On December 14 of this year both parties appeared and submitted the demurrer, and the court now, after studying the bill of injunction filed, that had

already been object of a detailed study by the court, dismisses the demurrer and grants defendant a term of ten days in which to answer the bill of injunction.

Let this order be notified.

Given in San Juan, Puerto Rico, this twenty-third day of December, 1936.

C. LLAUGER DIAZ, *Judge.*

The parties served with copy this twenty-third day of December, 1936. J. FIGUEROA, *Clerk.*

[Same Title.]

MOTION OF RECONSIDERATION OF ORDER.

Now comes defendant in the above-entitled case represented by the Attorney General of Puerto Rico and the Assistant Attorney General and to this Honorable Court respectfully shows and prays:

1. That on December 23, 1936 this Honorable Court entered an order in this case dismissing the demurrer filed by defendant to the bill of injunction.

2. That said demurrer was passed upon by this court without defendant having filed the memorandum that at the hearing of said demurrer he promised, and that, as will be remembered by the Honorable Judge intervening in this case, C. Llauger Diaz, on December 14 of this year the parties appeared at the hearing of said demurrer and submitted the same by briefs, defendant having a term of ten days since December 14 to file his brief.

3. That on the day the demurrer was dismissed, defendant was working on his brief, which he had not filed because the term for filing same had not expired.

4. That defendant prays for a reconsideration of the order given for the reasons contained in the brief accompanying this motion and which is now made a part of same.

Wherefore defendant respectfully prays this Honorable Court to reconsider its order of December 23, 1936, handing down in its stead

an order sustaining the demurrer and dismissing the bill of injunction.

San Juan, Puerto Rico, December 31, 1936.

B. FERNANDEZ GARCIA,
Attorney General.

EMILIO ALDREY,
Assistant Attorney General.

[Same Title.]

ORDER.

Considering the motion for rehearing filed by defendant in this case because we dismissed the demurrer without giving him an opportunity to file a memorandum which he promised, even though from the minutes of the court it appears that the demurrer was submitted, the court, wishing to give all the parties an opportunity to substantiate their contentions as amply as possible, decides to leave without effect, its order of December 23, 1936, dismissing the demurrer and granting defendant a term of ten days in which to answer the bill of injunction, and hereby now so decrees. Said order is set aside in its entirety and the case remains in the same status it had before said order.

Let this order be notified.

Given in San Juan, Puerto Rico, this eighth day of January, 1937.

C. LLAUGER DIAZ, *Judge.*

The parties served with copy this eleventh day of January, 1937.

J. FIGUEROA, *Clerk.*

[Same Title.]

ORDER.

After considering the briefs filed by the parties on the demurrer of defendant stating that the bill does not contain sufficient facts to constitute a cause of action, the court dismisses the demurrer and

grants defendant a term of ten days in which to answer the bill of injunction.

Let this order be notified.

Given in San Juan, Puerto Rico, this 24th day of February, 1937.

C. LLAUGER DIAZ, *Judge.*

The parties served with copy this twenty-fourth day of February, 1937. J. FIGUEROA.

[Same Title.]

STIPULATION OF FACTS AND SUBMITTAL OF THE CASE.

To the Honorable Court:

Now come the parties to this suit, by their respective counsel, and state that they have agreed to file in this court the stipulation that follows, so that the case may be taken as submitted by the same:

A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.

B. The facts alleged in the bill thus confessed, the parties submit to the court the present case under the following propositions of law, the determination of which they both understand decides this case:

1. Defendant maintains that the Supreme Court of Puerto Rico having decided against plaintiff the certiorari cases Nos. 6986, 6987 and 6988 to which reference is made in paragraph 7 of the bill, the injunction now prayed for does not lie.

2. Defendant further maintains that plaintiff not having taken recourse of the remedy provided for by Section 9 of Act No. 102 of 1925 to review the orders of the Workmen's Relief Commission, the writ of injunction does not now lie.

3. Defendant further maintains that the orders of the Workmen's Relief Commission of April 24, 1928 described in the bill do not have the nature of final judgments under the dispositions of the Code of Civil Procedure in force, providing that a final judgment will not be executed five years after having become final, for which reason the statute of limitation has not run against the right to execute said orders, an injunction, therefore, not lying to enjoin their execution.

4. Defendant further maintains that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in Section 25 of Act No. 85 of 1928, and not, as maintained by plaintiff, that specified by Section 7 of Act No. 102 of 1925.

C. Plaintiff maintains the negative of all the propositions as maintained by defendant, as above expounded.

And in order to save time and efforts, the parties now ask the court to consider the present case as tried and submitted by this stipulation, without a previous setting of same in the general calendar.

San Juan, Puerto Rico, April 10, 1937.

R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
Attorneys for Plaintiff.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

EMILIO DE ALDREY,
Assistant Attorney General.

[Same Title.]

ORDER.

In this case Judge Llauger on November 17 of last year issued a writ of preliminary injunction. In December the same judge dismissed a demurrer based on lack of a cause of action in the bill of injunction. Now a stipulation of facts has been presented to this judge submitting the case on its merits, in which stipulation all of the ultimate facts of the bill are confessed, which is tant amount to a reproduction of the demurrer already passed upon by Judge Llauger.

Under those circumstances it is proper that Judge Llauger, and not the judge subscribing this order, be the one to issue the order of final judgment in this case, and to that effect, and with the previous

consent of said judge, we now pass to him the record of the case for said purpose.

Let this order be notified.

Given at chambers, San Juan, Puerto Rico, May 21, 1937.

A. R. DE JESUS, *Judge*.

Parties served with copy this twenty-first day of May, 1937.

J. FIGUEROA, *Clerk*.

[Same Title.]

FACTS, OPINION AND JUDGMENT OF DISTRICT COURT, SAN JUAN, P. R.

The bill of injunction substantially alleges: the capacity of the parties; that on or before July 15, 1925, plaintiff under Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921, page 490, filed with the Workmen's Relief Commission a report containing all the requisites called for by said section, and the Treasurer of Puerto Rico imposed, taxed and collected from plaintiff the corresponding premium; on February 12, 1926, three of plaintiff's workmen, named Rodulfo Suarez, Isidro Villoch and Isidro Perez, died as a consequence of an accident while in their work in the municipality of Guayanilla, and the Commission, after holding the corresponding public hearings, on April 24, 1928 entered an order in each one of the cases declaring plaintiff an uninsured employer and awarding compensations of $2,000 to the dependents of each one of the deceased, further providing that a copy of the order be sent to the Attorney General of Puerto Rico so that in accordance with the provisions of Section 7 of Act No. 102 of 1925, said officer proceed to collect the amounts awarded; that on June 2, 1928, plaintiff filed three writs of certiorari before this court which were dismissed because of lack of jurisdiction, the Supreme Court of Puerto Rico having upheld this court (40 P. R. R. 456). Between April, 1928 and September, 1936, neither the Industrial Commission nor the Attorney General, nor any other Government Bureau has made any efforts to collect the compensations awarded until September 14, 1936, when the present Industrial Commission of Puerto

Rico issued an order in the case of Rodulfo Suarez requesting defendant as Treasurer of Puerto Rico to attach property of plaintiff to collect the compensation awarded to the beneficiaries of the workman, and the treasurer, after requesting payment from plaintiff, summarily attached a tank truck which it uses and is indispensable for the transportation of gasoline, and he notified plaintiff further that he would execute said attachment selling in public sale the attached truck, something which would cause grave damages to plaintiff. Plaintiff alleges that the request made by the Industrial Commission as well as the acts of the treasurer in trying to collect the said compensation are illegal, arbitrary and abusive for the following reasons:

(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925.

(b) Because even admitting that said order was legal and valid, then the procedure to be followed under Section 7 of Act No. 102 of 1925, was to report the order to the Attorney General of Puerto Rico for him to bring the corresponding action against the employer to collect the sum awarded.

(c) Because Section 36 of Act No. 85 of 1928 applies exclusively to accidents consequential to the employment occurring after the approval of the law,

(d) Because in accordance with Section 13 of Act No. 102 of 1925, which was in force at the time of the occurrence of the accident, the recourse of the Commission was to bring criminal action against plaintiff and hold it responsible, in accordance with the law, in the manner and form therein specified.

(e) Because the orders of the Workmen's Relief Commission of April 24, 1928, are in the nature of final judgments, and in accordance with the Code of Civil Procedure; plaintiff alleging further that it has no remedy at law, as the remedy of payment under protest is not available, and if the treasurer be not enjoined

from collecting by distraint on plaintiff's property, which he intends to do, irreparable damages would be caused plaintiff.

We granted a restraining order and to show cause, and after the usual incidents in cases of this nature, the parties have filed a motion that they entitled "Stipulation of Facts and Submittal of the Case" in which they say as follows:

[MEMORANDUM. Stipulation of facts and submittal of the case already printed at page 12, is here omitted. A. I. CHARRON, *Clerk*.]

We have already seen the ultimate facts alleged in the bill, and it is now proper to pass upon the questions propounded. The writs of certiorari brought by plaintiff against the Workmen's Relief Commission were decided by us under the theory that such remedy did not lie against the Workmen's Relief Commission. This view was upheld by the Supreme Court. *Vide* 40 P. R. R. 456. But this does not mean at all that, because the certiorari did not lie, plaintiff cannot impeach the proceeding followed by the treasurer to collect the compensations awarded, if that proceeding is not in accordance with the law or is oppressive or confiscatory for plaintiff. Act No. 102 of 1925 provides in Section 9 that the employer or the workman can take an appeal to the District Court following the procedure ordained by the Code of Civil Procedure. Such appeal is limited, according to the law, to those "cases of permanent partial disability, permanent total disability or death". This, in regard to the workman. In regard to the employer, the appeal from any order of the Commission is limited to those cases where the "decision is to the effect that the accident is one for which compensation is granted under this act". We doubt very much whether plaintiff could have taken an appeal for the purpose determined by the law because of the nature of the accident described by plaintiff in her bill and which has been confessed expressly by the defendant. Therefore, we are of the opinion that the employer under Section 9 of the Act of 1925 could not have taken an appeal.

Now, the question as to whether in this appeal plaintiff could have raised the incidental question as to whether she was or was not

insured, as insinuated by the Supreme Court in deciding the certiorari case referred to above, is not to be decided by us in this case, although we are convinced that plaintiff necessarily should have had means to protect her interests, inasmuch as the certiorari was not proper and it is not decided that in an appeal it could have raised the incidental question as to the insurance. If the orders of the Workmen's Relief Commission have or have not the nature of final judgments under the dispositions of the Code of Civil Procedure in force, is discussed by defendant in a brief previously filed, wherein the following view is taken: The Code of Civil Procedure, Section 243, provides that in all cases, except those for collection of money, compliance with the judgment can be obtained after a term of five years counted from the date in which authorization of the court or judgment in additional proceedings be registered. As this section refers exclusively to judgments handed down by courts, it cannot be applied in any form whatsoever to orders of the Workmen's Relief Commission, because if it is true that the latter has *quasi* judicial functions that were delegated to it by the Legislature of Puerto Rico, this does not mean in any sense that it is a court of justice and that its decisions are judgments within the juridical definition of that word; and moreover because we are not dealing here with a claim against private parties but with an action or claim by the state against an employer, and the state is not included in the dispositions of Section 243 of the Code of Civil Procedure. Defendant cites in support of his theory 36 *Cyc. 1171* and *Union Central Life* v. *Gromer,* 20 P. R. R. 80. Once we understand the nature of the action brought in this case, it will be easy to discover the fallacy of defendant's arguments. This is not an action for the benefit of the People of Puerto Rico nor for any branch, agency or dependency of same, but is an action against private parties, to wit: the beneficiaries acknowledged as such by the orders of the Workmen's Relief Commission and the plaintiff, which are both private entities. If the compensation was in the nature of a tax according to the law, it is clear that the procedure determined by the law should have been strictly complied with. There is no doubt that in an action brought by the Attorney General to collect the

compensations awarded, defendant could have raised this question which would then have been passed upon.

Another point in the stipulation of facts is that the right to execute the orders has prescribed in accordance with divers dispositions of the law. Under Act No. 102 of 1925, Section 7, when an accident occurred to an employee working for an uninsured employer, the Workmen's Relief Commission was to determine the proper compensation plus the expenses, and was so to communicate to the Attorney General, who was then to bring an action in a court of competent jurisdiction for the collection of the amount awarded. As the accident occurred, according to the stipulation of facts, on February 12, 1936, the compensation awarded to the dependents of the deceased workmen were subject to the procedure ordained by the section of the law just mentioned. Later, in 1928 (Act No. 85, page 630), the Workmen's Accident Compensation Law was amended and a different procedure was ordained by Section 25 of the Law, which provided that the Industrial Commission was to notify the Treasurer of Puerto Rico of the compensation awarded, and the latter was to impose and collect the compensation and expenses, these constituting a lien upon the property of the employer. Still later, the law was again amended in 1935 (Act No. 45 of that year, Section 15), maintaining the same provision of the Act of 1928, but providing that the compensation and expenses were preferential liens as against any other charge or lien, or taxes, whatsoever their concept, excepting refactionary credits and mortgages. There is no doubt, therefore, that in accordance with this last disposition of the law the treasurer can attach and sell property as in the case of any other tax, but the question to be decided in this case is the following: The accident having occurred in 1926 and the compensations having been awarded under the law then in force, can the procedure provided in the 1935 Act be applied to that compensation? When the Act of 1928 was amended, it was expressly stated by Section 48 of Act 85, *supra*, that the dispositions of this later law would not affect in any form whatsoever the pending cases involving compensations to workmen under previous laws. The Act of 1935, Section 34, also states that the provisions of this Act shall in no way affect pending liti-

gations or claims, and that the procedure to be followed in such litigation or claims shall be in accordance with the laws in force on the date of the accident. Plaintiff maintains that insomuch as that section of the law is procedural in nature, the law now in force should be applied, *i. e.*, Act No. 85 of 1928, which authorizes the attachment and sale of the property of the employer. To this defendant answers that, if it be so, all the dispositions of the law in regard to procedure should have retroactive effect and then Section 25 of the 1928 law would not apply, but Section 15 of the Act of 1935. We do not see how this can help the theory of defendant.

It is true that plaintiff chose the wrong way in bringing the certiorari, and that in an appeal, then granted by the law, it could have raised incidentally the question of the validity of the premium [*sic*] awarded. Now, if the Workmen's Relief Commission has been negligent or lax in making effective its order imposing a tax [*sic*] this should not prejudice the State fund nor the beneficiaries of the workman.

Be it as it may, we do not think that the injunction is the proper remedy to enjoin the collection of the compensations awarded inasmuch as that would mean the enjoining of the enforcement of a public statute for the public welfare by officers of the law. If the statute of limitations has or has not run against the action is something we cannot decide in this special proceeding. We think that the final or permanent injunction prayed for should not be granted, and give judgment accordingly.

JUDGMENT.

For the reasons expressed in the above description of facts and opinion, that are hereby made a part of this judgment, the court decides this case dismissing the bill of injunction, with costs to plaintiff, without including in them the legal fees of defendant's counsel.

Let this be notified.

Given in San Juan, P. R., this twenty-second day of July, 1937.

C. LLAUGER DIAZ, *Judge.*

Attest: JUAN FIGUEROA, *Clerk.*

[Same Title.]

MOTION FOR RECONSIDERATION OF JUDGMENT.

To the Honorable CARLOS LLAUGER DIAZ, *Judge:*

Now comes plaintiff by her [*sic*] attorney and respectfully alleges as reasons why the reconsideration of the judgment in this case should be granted:

1. That defendant in the stipulation of facts filed to avoid the production of evidence confessed all the ultimate facts of the bill of injunction. (*Vide* the "Stipulation of Facts and Submittal of the Case", paragraph A.)

2. That accordingly the conclusion must be reached, with the consent of defendant, that the orders of the Workmen's Relief Commission which are the basis of contention in this case, are null and void insofar as the same declare plaintiff an uninsured employer, as it was alleged in the bill of injunction (third paragraph) that plaintiff filed at the proper time with said Commission a report in duplicate under oath stating the number of its employees, the nature of their occupation and the total payroll of the previous fiscal year, the treasurer having assessed and collected from plaintiff the corresponding premium; facts which, in accordance with the law then in force (Act of 1925) were the requisites, compliance with which insured an employer.

3. That the orders of the Workmen's Relief Commission declaring plaintiff to be an uninsured employer and charging it with payment of the compensations described in the bill of injunction, being illegal, it is proper that the Treasurer of Puerto Rico be enjoined by injunction from collecting the referred compensations from plaintiff under authority of said orders.

4. That this Honorable Court, in its opinion deciding this case, admits that, the certiorari filed to review said orders of the Commission having been dismissed, this does not import that "plaintiff cannot impeach the proceeding followed by the treasurer to collect the compensations awarded, if that proceeding is not in accordance with the law or is oppressive or confiscatory for plaintiff".

5. That this Honorable Court, in its opinion deciding this case,

admits that from the impeached orders "we are of the opinion that the employer under Section 9 of the Act of 1925 could not have taken an appeal".

6. That if plaintiff could not take an appeal from said orders, and if the writs of certiorari to review the same were dismissed, and if this court is of the opinion that plaintiff should have an open way to impeach the procedure followed by the treasurer if this is not in accordance with law (*ante* paragraph 4), the remedy of injunction is the only one had by plaintiff to enjoin collection of said compensations, and in this proceeding, impeach the legality of the said orders and of the procedure that the treasurer is intending to follow to make the collection, which is, as known by this court, a summary one, without opportunity to plaintiff to be heard, and by notice, attachment and public sale of its property.

7. That this Honorable Court, in its opinion deciding this case suggests, although does not decide, that the orders of the Workmen's Relief Commission are in the nature of final judgments, and if that be true, as we maintain, according to Section 243 of the Code of Civil Procedure, execution of a judgment after five years of the issuance and registration of same, cannot be had, and the orders now impeached were issued and registered more than five years ago.

8. That the defendant, Treasurer of Puerto Rico, is attempting to collect from plaintiff the referred compensations by a summary procedure (distraint) having already attached plaintiff's property threatening with selling same to collect said obligations, and this procedure as followed by defendant is not authorized by any statute, for which reason defendant is acting illegally and without any statutory authority, and hence the injunction prayed for, lies.

9. Because the accidents occurred and the claims originated in the year 1926, and the law then in force (Act of 1925) provided in Section 7:

> "In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the

aforesaid sum; *Provided however*, That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice."

And in accordance with the law now in force (Act of 1935), Section 34, and under the title "Pending Litigation Unaffected", the claims will be conducted by the law in force at the time of the occurrence of the accident:

"The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

10. That the procedure to be followed in the prosecution of these claims being the one in force at the time of the occurrence of the accidents, and the said law (Act of 1925, Section 7) providing that the procedure to be followed is a plenary action by the Attorney General against plaintiff, a writ of injunction lies to enjoin the defendant, Treasurer of Puerto Rico, who, in open disobedience of the law and without any statutory authority is intending to collect summarily, in a way not provided by law.

11. That even accepting for the sake of argument that the procedure to be followed in the collection of these compensations is that provided by the law now in force (Act of 1935), this law does not authorize the treasurer in any form to attach and publicly sell in distraint proceeding the properties of plaintiff to satisfy the compensations. The relevant section of the Act of 1935, Section 15, states:

"In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both

of which shall constitute a lien on all the property of the employer; *Provided,* That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses;"

12. That the summary procedure of attachment and public sale, without a hearing to plaintiff and without giving it an opportunity to defend itself in regard to the legality of the orders awarding the compensations—orders which even defendant admits are illegal—is an illegal procedure, not authorized by any applicable statute, and it is a universal doctrine that

"Authority to sell land for taxes being exclusively statutory, such authority can be exercised only in the precise cases specified in the law, and it has been held that an act granting this authority will not apply to taxes already delinquent unless such act is expressly made retroactive, nor can the power be exercised after the end of the period of time limited by law for that purpose." 61 C. J. 1115, and authorities cited.

"The power to sell land for delinquent taxes, in a collector of taxes, is a naked power conferred by statute and can only be validly evercised in conformity with the statute . . ." 61 C. J. 1116.

"Tax sales are made exclusively under statutory power." *Simpson* v. *Reiman,* 140 Ark. 417.

13. That if it be permitted to the Treasurer of Puerto Rico against the law, to sell summarily plaintiff's properties which he had attached in collection of the said illegal compensation, plaintiff would lack any other remedy except an injunction to avoid the taking away of its property without due process of law, inasmuch as it would not have an opportunity to raise the question of the legality of the said orders.

14. That this Honorable Court, in its opinion deciding this case, agrees with plaintiff that "If the compensation was in the nature of a

tax according to the law, it is clear that the procedure determined by the law should have been strictly complied with", and if the injunction is not issued, the treasurer will be suffered to disregard the procedure ordained by the law and which he should follow *"strictissimi juris"*.

15. That the reason given by this Honorable Court to deny the injunction, to wit, that it is not proper to enjoin the collection of the compensations awarded because that would amount to enjoin the enforcement of a public statute for the general welfare by officers of the law, is not sufficient because:

(a) The Treasurer of Puerto Rico is not enforcing a public statute, but on the contrary, is acting beyond all statutory authority when he attempts to collect from plaintiff by distraint proceeding not provided for by law, it being the duty of the Attorney General, under the applicable law, to bring an ordinary action against plaintiff to collect the compensations.

(b) The Treasurer of Puerto Rico is not acting for the benefit of the public in this case, but for the particular benefit of the beneficiaries of the compensations awarded, and this court, in its opinion deciding this case, has said:

"Once we understand the nature of the action brought in this case, it will be easy to discover the fallacy of defendant's argument. This is not an action for the benefit of The People of Puerto Rico nor for any branch, agency or dependency of same, but is an action against private parties, to wit: the beneficiaries acknowledged as such by the Order of the Workmen's Relief Commission and the plaintiff, which are both private parties."

Wherefore with all due respect it is now prayed that the court reconsider its opinion and judgment of July, 1937, it being prayed further that, while this court considers the present motion, an order be entered setting aside the judgment handed down until this motion is decided.

San Juan, P. R., July 24, 1937.

R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
Attorneys for Plaintiff.

[Same Title.]

ORDER.

Considering the petition for rehearing of the judgment submitted by plaintiff, after studying again the opinion and judgment, we believe that the reconsideration prayed for should be, and hereby is, denied.

Let this be notified.

Given in San Juan, P. R., this third day of September, 1937.

C. LLAUGER DIAZ, *Judge.*

The parties notified with copy this seventh day of September, 1937.

J. FIGUEROA, *Clerk.*

[Same Title.]

PETITION FOR APPEAL TO SUPREME COURT OF PUERTO RICO.

To the Clerk of the Court and to the Attorney General of Puerto Rico as Counsel for Defendant:

Gentlemen: Please be notified that plaintiff, not being satisfied with the judgment entered in this case on July 22, 1937, and with the order of September 3, 1937, denying the motion for reconsideration of the judgment filed by plaintiff, hereby appeals from same to the Honorable Supreme Court of Puerto Rico. Of which we notify you in accordance with law.

San Juan, P. R., September 14, 1937.

JAMES R. BEVERLEY,
R. CASTRO FERNANDEZ,
Attorneys for Plaintiff.

Notified with copy this fourteenth day of September, 1937.

B. FERNANDEZ GARCIA,
Attorney General,
EMILIO DE ALDREY,
Assistant Attorney General,
Attorneys for Defendant.

No. 7603.

The Texas Company (P. R.) Inc., Plaintiff and Appellant,

v.

Rafael Sancho Bonet, Treasurer of Puerto Rico,
Defendant and Appellee.

Appeal from Judgment of the San Juan District Court.

INJUNCTION.

OPINION OF THE COURT

DELIVERED BY MR. CHIEF JUSTICE DEL TORO.

San Juan, P. R., February 11, 1938.

This case deals with a bill of injunction dismissed by the District Court.

In said bill, plaintiff, a corporation, substantially alleged that it was an insured employer since July 15, 1925, in which date and in accordance with the Workmen's Accident Compensation Act as amended by Act No. 61 of 1921, it filed with the Workmen's Relief Commission the corresponding statement, the Treasurer of Puerto Rico having assessed and collected the tax [*sic*] covering until July 15, 1926;

That on February 12, 1926, plaintiff's workmen Rodulfo Suarez, Isidro Villoch and Isidro Perez died as a consequence of certain accident while they were working, which the Commission investigated, declaring said Commission on April 24, 1928 that plaintiff was not an insured employer notwithstanding that its records showed to the contrary, awarding compensations of $2,000 to the dependents of each one of the deceased and ordaining its administrative secretary to prepare the corresponding liquidations sending them to the Attorney General for him to obtain from plaintiff payment of the same in accordance with Section 7 of Act No. 102 of 1925 then in force;

That on July 2, 1928 plaintiff filed in the same District Court three writs of classical certiorari that were dismissed by the court because of lack of jurisdiction by judgments of July 23, 1928 wherein the records of the cases were remanded to the Commission, there to

continue their course as provided by law, said judgments having been affirmed by this Supreme Court. 40 P. R. R. 456.

That between April 24, 1928 and September 14, 1936 the Commission nor its successor, the Industrial Commission, nor the Attorney General made any attempt to collect the compensations;

That on September 14, 1936 the Industrial Commission issued an order requesting the defendant, Treasurer of Puerto Rico, to levy an attachment in the case of the deceased Rodulfo Suarez on properties of plaintiff in order to collect the compensation and the treasurer after requesting plaintiff on October 27, 1936 attached a tank truck belonging to it, the use of which is indispensable in its business of selling and delivering gasoline, and further notified that if on November 6. 1936 plaintiff did not pay the compensations plus $1 costs, he would sell at public sale the attached property, something which would cause plaintiff great injuries and irreparable damages, it being the intention of the Industrial Commission and of the treasurer to follow an identical course in the collection of the other compensations; and

That the request made by the Industrial Commission to the treasurer as well as the acts of the latter are illegal and abusive for the following reasons:

(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925.

(b) Because even admitting for the sake of argument that said orders were legal and valid, according to their very text and to Section 7 of Act No. 102 of 1925, the procedure to be followed to collect a compensation awarded by reason of an accident to a workman of an uninsured employer, is to report the order to the Attorney General of Puerto Rico for "institution of proper action, in a court of competent jurisdiction against said employer to recover the aforesaid sum" the Industrial Com-

mission of Puerto Rico and the Attorney General of Puerto Rico being obliged to follow said procedure, as clearly ordained by the present Workmen's Compensations Law, Act No. 45, passed April 18, 1935, Section 34 of which reads as follows:

"Section 34. The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

(c) Because Section 36 of Act No. 85 of 1928, under which the defendant, Treasurer of Puerto Rico, intends to find justification for his acts, is applicable exclusively to workmen's accidents occurring after the passage of said law and while the same was in force; and said law has been expressl repealed by Act No. 45 of 1935, and especially by Section 34 of said law as above transcribed.

(d) Because in accordance with Section 13 of Act No. 102 of 1925, which was in force at the time of the occurrence of the aforementioned accident, in case plaintiff should have given false reports to the Commission in the statement it filed on July 15, 1925,—which we emphatically deny—the only recourse of the Commission would have been to bring a criminal action against plaintiff and hold it responsible for three times the difference between the premium paid and the premium it should have paid.

(e) Because the orders of the Workmen's Relief Commission of April 24, 1928, are in the nature of final judgments, and in accordance with the Code of Civil Procedure of Puerto Rico no judgment can be executed five years after it has become final, which term has expired with excess in these three cases; and the Workmen's Relief Commission and its successor have been negligent (laches) in bringing proceedings to collect the compensations awarded by the same.

Plaintiff alleged finally that there not being an adequate remedy at law inasmuch as the treasurer was not intending to collect a tax, the remedy of payment under protest was not available, an injunction being the proper remedy, praying the court to issue it accordingly.

After the case followed the course provided by law, it was finally submitted to the consideration and decision of the court on the following stipulation:

[MEMORANDUM. This stipulation already printed at page 12, is here omitted. A. I. CHARRON, *Clerk*.]

By judgment of July 22, 1937 the court dismissed the bill. The last paragraph of the opinion in which the judgment was based, states:

"Be it as it may, we do not think that the injunction is the proper remedy to enjoin the collection of the compensations awarded inasmuch as that would mean the enjoining of the enforcement of a public statute for the public welfare by officers of the law. If the statute of limitations has or has not run against the action is something we cannot decide in this special proceeding. We think that the final or permanent injunction prayed for should not be granted, and give judgment accordingly."

Plaintiff asked for a reconsideration of the judgment and the court denied it. An appeal was then taken to this court.

Two errors are assigned in the brief. The first one maintains that the court erred in dismissing the bill. The second that the court erred in basing its judgment on the reasoning contained in the paragraph of its opinion already transcribed above.

As plaintiff repeatedly insists in its brief that defendant confessed its status as insured employer as well as the illegality of the orders of the Commission, the execution of which it prays first to be enjoined and then set aside by virtue of the injunction, it is proper to state that this is denied by defendant in its brief as follows:

". . . in our case plaintiff has never proved that it does not owe the amount whose payment is demanded, and to the contrary, there exists an official order of the Workmen's Relief Commission to the effect that this employer, because of its non-

insured status should pay the compensation awarded to the injured workmen.

"Plaintiff further alleges that inasmuch as by the stipulation of facts filed before the court below the ultimate facts of the bill were confessed, it should be accordingly understood that defendant admitted that the orders of the Workmen's Relief Commission of April 24th, 1928 were issued against the express wording of the law, and were therefore null and void. Letter A of said stipulation reads as follows:

'Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law it might contain.'

"It is undisputable that what was admitted by defendant by said stipulation were the facts which occurred and which gave origin to all this proceeding since its inception. The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively.

"As it can be easily determined from the contents of the stipulation in question, the only conclusion which can be reached is that the parties wanted to argue and submit to the inferior court questions of law, to be limited to the following:" (Same as in stipulation.)

Although the first paragraph of the stipulation is not as clear and concrete as it should have been, the same is in our opinion susceptible of the interpretation put to it by defendant, an interpretation which makes defendant consistent with the position he assumed before the District Court and before this Supreme Court.

This point thus clarified, we find an order issued by the Workmen's Relief Commission on April 24th, 1928 awarding compensation to the dependents of the deceased workmen, which was to be paid by plaintiff because, as declared by the Commission, it was not an insured employer.

What did plaintiff do when it learned of this? It went to the District Court of San Juan asking for a writ of certiorari to nullify the order. The court dismissed the writ because it did not lie and plaintiff appealed to this court which, through Mr. Justice Wolfe, decided the appeal as follows:

"This is an appeal from the judgment of the District Court of San Juan, annulling a writ of certiorari. The petitioner there complained of the action of the Workmen's Relief Commission in treating petitioner, The Texas Company, as if it were an insured employer whereas petitioner alleged that the records of the Workmen's Relief Commission failed to show it was such an uninsured employer and on the contrary showed that the said Texas Company was in fact insured. The Commission awarded compensation to a working man. The petitioner appellant did not complain in the court below nor in this court of the award made by the Commission, but its recourse to the courts was based exclusively on its contention that it was an insured employer. The result of treating petitioner as an uninsured employer would subject it under section 20 of the Workmen's Accident Compensation Act, Laws of 1925, page 942, to a special procedure at the instance of the Attorney General and perhaps to additional expenses. The petition alleged that the action of the Workmen's Relief Commission was entirely null and void and that the said commission was entirely without jurisdiction to make the said award. Relief was prayed under section 28 of the said Act as amended or under the general law of certiorari. . . .

"Appellant does not contend at all that it has a remedy by certiorari under any act affecting workmen's relief. Its claim arises by a process of exclusion. Assuming no special writ of certiorari under the Workmen's Accident Compensation Act, petitioner says it could not appeal because it was not attacking the award; that the Workmen's Relief Commission is a quasi-judicial body whose decisions should be reviewable by certiorari when no appeal lies.

"Section 1 of the statute governing the general right of certiorari is as follows: (Copied.)

"It is evident, as held by the court below, that this writ applies only to review the actions of courts.

"The appellant invokes the inherent powers of courts, but where the legislature has expressed itself as under the general

certiorari act, we find thereunder no justification for the review of actions of boards created by the said legislature. . . .

"Furthermore the appellant does not convince us that an appeal to review the decision complained of did not lie under section 9 of the Act of 1925, laws of that year, page 930. It provides:

'Section 9. Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act.'

"A general appeal, it would seem, could raise the incidental question.

"In any event if the board was without jurisdiction then the petitioner ought to have had other means of protecting itself that we need not suggest.

"We find nothing in the laws of Porto Rico to authorize the certiorari solicited and the judgment will be affirmed."

No other recourse was taken by plaintiff and the order remained standing, no effort being necessary to conclude that after the years passed, plaintiff is not in a position to do now by injunction what in due time it could have done by the means placed at its disposal by the law.

Plaintiff insists that in accordance with the law now in force the most that could have been done would have been to send the case to the Attorney General for him to file the corresponding suit in which it could have a right to allege and prove that it was not to pay the compensation, being an insured employer. Plaintiff calls attention to Section 34 of Act No. 45 of April 18, 1935 on the premises, which states:

"The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or

claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

Appellant's contention does not lack force at first inquiry, but if we study the final disposition of the section, "and the workmen shall be entitled to such sum of money as may be prescribed by said laws", it will be seen that the purpose of the law was no other, as maintained by defendant, than to save the rights of the workmen in respect to the compensation, it not being the intention to contradict the well settled rule to the effect that procedural statutes are immediately applicable.

"It is a principle of Spanish Law, recognized by the jurisprudence of the highest courts of the Union", was said by this court in *American Railroad Company of Porto Rico* v. *Hernandez*, 8 P. R. R. 492, "that the laws governing jurisdiction and procedure are matters of public interest and have a retroactive effect, that is to say, they are not considered as of a retroactive character in such a sense that they are included in the provisions of article 3 of the Civil Code".

And as it is said in 59 Corpus Juris 1173, summing up the cases, "the general rule that statutes will be construed to be prospective only and not retrospective or retroactive ordinarily does not apply to statutes affecting remedy or procedure, or, as is otherwise stated, such general rule is subject to an exception in the case of a statute relating to remedies or procedure".

Furthermore, the law refers to "pending litigations or claims" and ordains that "the procedure followed in such litigations or claims until their termination shall be . . ." and this case was terminated by the order of April 24, 1928, the execution of which is now intended.

The fact that Act No. 45 of 1935 be the one applicable and not Act No. 85 of 1928, is of no consequence, because according to them both, the collection by the treasurer is allowed as in case of a tax.

We do not think that plaintiff is either right when it maintains that the order of the Commission of April 24, 1928, being in the nature of a judgment ordering the payment of money, more than five years having elapsed since it became final, its execution is not permitted in

accordance with Section 243 of the Code of Civil Procedure which prescribes:

> "In all cases other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose, founded upon supplemental proceedings."

This rule of law was decreed for application to judgments handed down by courts of justice and not by a Commission, although it be admitted that said Commission constitutes a quasi-judicial organism, and in all events the case is not strictly one for recovery of money. Having reached the foregoing conclusion, it is unnecessary to study and decide the second of the errors assigned. The appeal will be dismissed and the judgment and order appealed from affirmed.

EMILIO DEL TORO,
Chief Justice.

[Title omitted.]

JUDGMENT OF SUPREME COURT OF PUERTO RICO.

San Juan, P. R., February 11, 1938.

For the reasons stated in the foregoing opinion, the judgment and order appealed from rendered by the District Court of San Juan on July 22, 1937 and September 3, 1937, respectively, in the above entitled case, are hereby affirmed.

It was thus pronounced and ordered by the court as witness the signature of the Chief Justice. Mr. Justice Cordova Davila took no part in this decision.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same Title.]

MOTION FOR RECONSIDERATION OF JUDGMENT.

To the Honorable Court:

With the respect that this court has always merited to the attorneys representing plaintiff-appellant for its absolute integrity and clear

judicial thinking, we now file this motion for reconsideration of the judgment handed down in the above-entitled case on February 11th of this year, with the conviction that, if this court gets to the conclusion that it should substitute said judgment for a different one, it will not hesitate to do so in compliance with its clear duty to make justice to the litigants.

To substantiate this motion we first insist in the following proposition:

DEFENDANT CONFESSED ALL THE ULTIMATE FACTS OF THE BILL OF INJUNCTION.

It seems to us elementary in the mechanics of our civil procedure as established by the laws in force that the manner to traverse the facts contained in a complaint is to deny them, producing later at the trial the necessary evidence to substantiate the denial. If the facts are denied, but different facts from those alleged in the complaint are not proved, the latter will be taken as established. If the facts are not denied they will be taken as confessed. In our case defendant did not deny the facts contained in the bill, but to the contrary, in a stipulation filed with the purpose of obviating the production of evidence, confessed them all. The first paragraph of said stipulation reads:

> "A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.
>
> "B. The facts alleged in the bill thus confessed, the parties submit to the Court the present case . . ."

We submit our opinion that this court is bound to take as confessed the ultimate facts of our petition. We do not see how it is possible to deny by subtle interpretations the fact that defendant has confessed the ultimate facts of our cause of action.

This court quotes with tacit approval paragraphs of defendant's brief in which he intends to escape from the weight of his confession of the ultimate facts of the bill. Thus:

> ". . . in our case plaintiff has never proved that it does not owe the amount whose payment is demanded, and to the contrary, there exists an official order of the Workmen's Relief

Commission to the effect that this employer, because of its non-insured status should pay the compensation awarded to the injured workmen.

"Plaintiff further alleges that inasmuch as by the stipulation of facts filed before the court below the ultimate facts of the bill were confessed, it should be accordingly understood that defendant admitted that the Orders of the Workmen's Relief Commission of April 24th, 1928 were issued against the express wording of the law, and were therefore null and void. Letter A of said stipulation reads as follows:

'Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law it might contain.'

"It is undisputable that what was admitted by defendant by said stipulation were the facts which occurred and which gave origin to all this proceeding since its inception. The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively.

"As it can be easily determined from the contents of the stipulation in question, the only conclusion which can be reached is that the parties wanted to argue and submit to the inferior court questions of law, to be limited to the following:"

This court states, at page 8 of the opinion, in commenting the statement of defendant:

"Although the first paragraph of the stipulation is not as clear and concrete as it should have been, the same is in our opinion susceptible of the interpretation put to it by defendant, an interpretation which makes defendant consistent with the position he assumed before the District Court and before this Supreme Court."

In answer to this contention it is enough to state that plaintiff-appellant did not need to prove it did not owe the amount claimed, for the clear reason that defendant himself, by virtue of his confession of the ultimate facts of our bill released it from that burden. In regard to the existence of an official order of the Workmen's Relief

Commission to the effect that plaintiff was not an insured employer, it is enough to repeat the argument, to wit, that in express words defendant confessed that the Texas Company was an insured employer by virtue of payment of the corresponding premium to the Treasurer of Puerto Rico covering the fiscal year 1925–26.

Let us see what facts, among others, were accepted by defendant. The third paragraph of the bill alleges:

> "3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921, (p. 490) that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premiums, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926."

Let us see now the law in force at that time to see if we are correct in our assertion that there cannot be any doubt that The Texas Company (P. R.), Inc., was insured during the year 1925–26:

> "It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed . . . shall be computed . . .
>
> "The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission."

Obviously if plaintiff had insured its employees and workmen, and the rationale of the orders of the Commission was that plaintiff was not an insured employer for which reason it was charged with the obligation of paying the compensation, then the orders are clearly null and illegal, because issued without jurisdiction.

That the Commission lacked jurisdiction to charge plaintiff with payment of the compensations is clear. Section 7 of the Act of 1925 in regard to workmen's compensations is the one granting authority to the Commission to charge an uninsured employer with payment of the compensations. And that only in case that the employer, in violation of the law was uninsured.

> "In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum;"

Hence the Commission lacked absolutely authority, power and jurisdiction to compel an employer duly insured to pay compensations to the beneficiaries of the deceased workmen. The lack of that power is absolute, and does not admit of interpretations. It simply did not exist, and not existing, the Commission did not have jurisdiction to charge plaintiff with said duty.

> "A judgment rendered by a court having no jurisdiction is a mere nullity, and will be so held and treated whenever and for whatever purpose it is sought to be used or relied on as a valid judgment. This involves jurisdiction of the subject matter or cause of action, and jurisdiction to determine the particular question determined and to render the particular judgment awarded." 33 C.J. 1073.
>
> "A judgment not authorized by law is void." 33 C. J. 1077.
>
> "A judgment which is void . . . is a mere nullity; it is not binding on anyone; it raises no lien or estoppel; it does not impair or affect the rights of anyone; . . . it confers no rights

upon the party in whose favor it is given, and affords no protection to persons acting under it. Such a judgment may be vacated or set aside . . . but it is not necessary to take any steps to vacate or avoid it until an effort is made to enforce it." 34 C. J. 509–510.

This high tribunal is acquainted, of course, with the theory that in relation to courts or quasi judicial bodies of limited powers, there is not a presumption of jurisdiction. It has been clearly decided that a board or Industrial Commission or a workmen's relief commission falls under the rule that jurisdiction is not assumed.

"Section 664. Presumption of jurisdiction. As the board is a special or limited tribunal, there is no presumption in favor of its jurisdiction; the fact upon whch the jurisdiction is founded must appear in the record."

"Section 665. In accordance with the rule relating to courts of limited powers, the board cannot acquire jurisdiction as to the subject matter by waiver, agreement, conduct or estoppel."

"Section 666. The jurisdiction of the board is confined by the act and limited by its provisions."

"Section 667. Lack of jurisdiction in the board may be asserted at any time." 71 C. J. 921 *et seq*, section on Workmen Compensation Acts.

Holding with undisputable authority that plaintiff can impeach the validity of the orders of the Commission, the cases have established in relation to facts similar to ours:

"Where the parties admit facts which show that a judgment in a former suit is void or where they are established without objection, the case is similar to one wherein the judgment is void upon its face and is subject to attack. The defect of jurisdiction may be either in respect to the person, the subject matter, or the authority to render the particular judgment or decree, a judicial determination outside the issues being without jurisdiction and void. Where a court is authorized by statute to entertain jurisdiction in a particular case only, if it undertakes

to exercise jurisdiction in a case to whch the statute has no application, such court acquires no jurisdiction and its judgment when made is a nullity and subject to collateral attack." 34 C. J. 528, Section 834.

The above doctrine is entirely applicable to our case. When the parties admit that a judgment in a former case is null, the situation is identical to that in which the nullity appears from the very judgment itself and this can be attacked. Plaintiff alleged and defendant admitted facts more than sufficient for this court to conclude that the orders of the Workmen's Relief Commission are null. And are null as if the nullity sprang from their very text by virtue of the confession made by the parties of facts which unquestionably make said orders null. The lack of jurisdiction may consist in the lack of authority to issue a particular order or judgment, and we maintain that the Workmen's Compensation Law never gave authority to the Commission to charge plaintiff with the duty to pay the compensations when it clearly appeared, and so clearly that defendant himself so admits, that plaintiff had paid its premium and was accordingly insured.

"An award under the Workmen's Compensation Act against a non-compliance employer is not final or conclusive on fundamental or jurisdictional questions involved in the award." *State* v. *Watland*, 221 N. W. 680.

In the admirable monograph on workmen's compensations appearing in the recent volume, 71 C. J. 956, Section 720, it is stated that before a board or Industrial Commission can issue with adequate jurisdiction an order or decree it is necessary to prove "the existence of the necessary jurisdictional facts".

"Prerequisites to Exercise of Jurisdiction. All conditions of the compensation act must be present before the board or commission can make any award. Thus the employer and the injured person must come under the act, and a commission cannot entertain a proceeding against one not subject to the provisions of the act. Every statutory step for maturing a claim from the

time of the injury to its final adjudication under the compensation laws is a mandatory requirement to the exercise of jurisdiction by the statutory agencies." 71 C. J., page 959, Section 722.

We insist with all the emphasis that we are capable of that according to the own confession of defendant, the Commission lacked the jurisdictional facts necessary to issue the orders attacked, inasmuch as plaintiff was duly insured. It was a jurisdictional requisite before the orders could be issued that plaintiff be not insured, as stated by the doctrine referred to above in regard to the jurisdiction of the Commission, it being clear that the same cannot "entertain a proceeding against one not subject to the provisions of the Act". And plaintiff, having paid her workmen's compensations premium—a fact accepted and confessed—"was not subject to the provisions of the Act". The Texas C.. (P. R.) Inc., insured employer for the year 1925–26 was not subject in any form or manner whatsoever to a proceeding to compel her to pay compensations that should have been paid by the State fund.

Defendant says in his brief "that what defendant admits in the said stipulation are the facts which occurred and which gave origin to all this proceeding since its inception". This is enough because it is a confessed fact that plaintiff complied with the acts required to insure it, as ordained by the law then in force. That being so we cannot see how it is possible for this court to escape the conclusion that the orders of the Commission were issued without jurisdiction, the law not authorizing said organism to impose any liability to an insured employer.

The second point of this motion for reconsideration is to the effect that

DEFENDANT IS NOT AUTHORIZED BY LAW TO COLLECT BY DISTRAINT THE COMPENSATIONS HEREIN.

We agree with this Honorable Court that as a general rule statutes establishing procedure can and should be considered retroactive in their effects. But when the law establishing any procedure contains a saving clause, that is, a clause keeping the former procedure as to pending cases, then there can be no doubt that the new procedure

cannot be applied to cases pending under the former law. Section 34 of the law in force in regard to workmen's compensations (Act No. 45 of 1935) provides:

> "The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

We now call the attention of the court to the fact that the law provides that its dispositions will not affect in any form whatsoever the pending cases or claims. Such cases or claims will proceed . . . , proceed, from procedure, which means adjective law, the manner to enforce substantive rights. After said section provided that the procedure as established by the laws in force at the time of the occurrence of the accident should be respected, it went further and stated "and the workman will be entitled to such sum of money as may be prescribed by said laws". The court has not noticed a clear distinction in this transitory provision of the law. When that section states that the cases or claims will proceed until their termination in accordance with former laws, the former procedure, the adjective law, the procedural mechanics that will serve as a means to obtain the compensation is being saved. When the said section, at the end, states "and the workmen shall be entitled to such sum of money as may be prescribed by said laws", what is saved is not the former procedure, but the substantive rights previously acquired by the workman or his beneficiaries to receive a certain amount as compensation. Therefore the section we are commenting contains two different aspects in the mechanics of workmen's compensation. By the first, the former procedure is saved. By the second the substantive right of utmost importance in the law is saved, *i. e.*, the amount of the compensation to be awarded.

When this Honorable Court states that the spirit of said section is only to preserve for the workman the compensation to which he was

entitled by virtue of the former laws, it is limiting said section to only one of its two aspects, and is forgetting the fact that the procedure established by former laws, which should control all the claims or cases pending, is saved.

In specific cases wherein the determination of the retroactive application of statutes of workmen compensation was involved, it has been held that when a saving clause exists in regard to pending claims, no retroactive character can be given to the law.

Superior Coal v. *Ind. Com.*, 151 N. E. 890, 892, Ill. 1926:

> "The law in such cases is that a statute of that character (a procedural) is to be held retrospective in its operations, AS THERE IS NO SAVING CLAUSE PROVIDING OTHERWISE."

Duqoin v. *Ind. Com.*, 151 N. E. 108, Ill. 1928:

> "When a change of law merely affects the remedy or the law of procedure, all rights of action will be enforceable under the new procedure without regard to whether accrued before or after such change of law and without regard to whether suit has been instituted or not, unless there is a saving clause as to existing litigation." *City of Chicago* v. *Ind. Com.*, 292 Ill. 409, 127 N. E. 46. *Otis* v. *Ind. Com.*, 134 N. E.

If the proper procedure was for the Commission through the Attorney General, in accordance with the law in force at the time of the occurrence of the accidents, to bring an ordinary action to collect the compensations, then it seems clear that the Treasurer of Puerto Rico not having authority to attempt the collection of the compensations, should be enjoined from collecting them by distraint, a procedure which we all know is not favored by the courts and is one *strictissime juris*. The Treasurer of Puerto Rico in this proceeding is really a private person without authority of law to attempt this violent collection. Not being so authorized by the applicable law to collect from plaintiff, he is a mere "trespasser" attempting to hold violently property not belonging to him. Naturally an injunction lies to enjoin him from committing an act not only arbitrary, but illegal.

This Honorable Court disposes too lightly our contention that,

even accepting for the sake of argument that the procedure established by the law now in force be the one applicable, even so the treasurer lacks authority to collect by distraint proceeding. Section 15 of Act 45 of 1935 reads:

> "In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided,* That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; . . ."

In what part of said section and in what form is authority given to the Treasurer of Puerto Rico to collect these compensations by the summary procedure of notification, attachment and public sale? That section only states that the treasurer "Shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer. . . ." Act of 1928 in which defendant tried to find justification in the court below provided in Section 25 that the treasurer "shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect as if it were a tax levied on such property. . . ."

As taxes can be collected by distraint, it is clear that under the law of 1928 the compensations, which were given the same legal priority and effect of taxes, could be collected by distraint. But the Act of 1935 does not give them such legal effect or priority, and only

states that the treasurer shall collect them. That being the case, it shall be taken that he can only collect them by an ordinary action.

3 Codley on Taxation 2725, sec. 1381 (4th Edition):

"The legislature has power to authorize and direct tax sales of land without a previous judgment or decree ordering the sale, BUT SUCH POWER TO SELL REAL ESTATE FOR DELINQUENT TAXES DOES NOT EXIST UNLESS EXPRESSLY CONFERRED BY STATUTE."

Ibid. Sec. 1382:

"TAX SALES ARE MADE EXCLUSIVELY UNDER STATUTORY POWER, THE POWER WHICH THE STATE CONFERS TO ASSESS AND LEVY TAXES DOES NOT OF ITSELF, INCLUDE A POWER TO SELL LANDS IN ENFORCING THE COLLECTION, BUT THE POWER MUST BE EXPRESSLY GIVEN. THE OFFICER WHO MAKES THE SALE SELLS SOMETHING HE DOES NOT OWN, AND WHICH HE CAN HAVE NO AUTHORITY TO SELL EXCEPT AS HE IS MADE THE AGENT OF THE LAW FOR THAT PURPOSE."

Brown v. *Veazie*, 25 Me. 359, 363:

"Sales of real estate for the non-payment of taxes must be regarded in a great measure as an exparte proceeding. The owner is to be deprived of his land thereby; and a series of acts preliminary to the sale are to be performed to authorize it on the part of the assessors and collectors to which his attention may never have been particularly called; *and, experience and observation render it notorious that the amount paid by purchasers at such sales is uniformly trifling in comparison with the value of the property sold.* It has therefore been held, with great propriety, that, to make out a valid title under such sales, *great strittness is to be required; and it must appear that the provisions of law preparatory to and authorizing such sales have been punctiliously complied with.*"

"Sales of land for delinquent taxes *being in derogation of private rights of property*, the power has been said to be *strictissimi juris, and* statutes authorizing such sales must be *strictly construed in favor of the owner* of the land. (*Koontz* v. *Ball*, 96

W. Va. 117, 122 S. E. 461) or in so far as they are intended for their benefit or the protection of the citizen, *and the scope of such statutes is never enlarged* beyond their actual terms." *Peterson* v. *Graham*, 131.

"The power to sell land for delinquent taxes, in a collector of taxes, *is a naked power conferred by statute and can only be validly exercised in conformity with the statute.*" 61 C. J. 1116.

"AUTHORITY TO SELL LAND FOR TAXES BEING EXCLUSIVELY STATUTORY, SUCH AUTHORITY CAN BE EXERCISED ONLY IN THE PRECISE CASES SPECIFIED IN THE LAW, AND IT HAS BEEN HELD THAT AN ACT GRANTING THIS AUTHORITY WILL NOT APPLY TO TAXES ALREADY DELINQUENT UNLESS SUCH ACT IS EXPRESSLY MADE RETROACTIVE, NOR CAN THE POWER BE EXERCISED AFTER THE END OF THE PERIOD OF TIME LIMITED BY LAW FOR THAT PURPOSE." 61 C. J. 115, citing numerous authorities.

We now call attention to the desperate and difficult position of plaintiff-appellant. There is no doubt that it does not have any remedy at law, and that the only remedy is the one in equity now prayed for. The orders of the Commission are clearly null and contrary to law; and this is confessed by defendant himself who admits that plaintiff being duly insured for the year 1925–26, the Commission issued orders imposing the payment of the referred compensations for the reason that it was not insured. The law in force at the time of the death of the workmen, the applicable law in so far as the procedure is concerned in the collection of the compensation, and notwithstanding the saving clause to which reference has been made, has been declared inapplicable by this court, being that law the only one which could remedy the situation of plaintiff, inasmuch as in an ordinary suit brought by the Attorney General, plaintiff can set up the defense of having paid its workmen compensation insurance premiums. Notwithstanding the fact that the law that this court holds applicable, to wit, Act of 1935, does not authorize the treasurer to collect the compensations by distraint, the denial of the writ of injunction is equivalent to a tacit authorization for doing so, that being a judicial amendment to the statute in the sense of includ-

ing such authorization. And all this under universally established dispositions to the effect that fiscal statutes are construed favorably to the taxpayer and against the sovereign.

We want to call the attention to the fact that plaintiff is being deprived of its substantive right of defending itself and of raising the proper questions against defendant in an ordinary suit in collection of the compensations, as, for example, the right clearly substantive to allege and prove—a fact admitted by defendant—payment of the premium of insurance; and that a statute which destroys an absolute, fundamental and substantive right to a defense of an unjustified attack to take its property away cannot be given retroactive effect.

In short that, The Texas Co. (P. R.), Inc., which complied with its duty under the law to insure its employees for the year 1925–26, a fact confessed by defendant, and that paid the corresponding premium, is now deprived of its property without due process of law because the Workmen's Relief Commission, without jurisdiction, has charged it with the obligation to pay damages that it was the duty of the State fund to pay, and there has not been and there is not now an adequate remedy in our laws to avoid this injustice and which would safeguard the property rights of plaintiff, of which it is threatened to be deprived, without color of due proces of law.

The nullity of the orders attacked being based on lack of jurisdiction, we deem that any moment is proper and none better than at execution to resist the orders in question.

By virtue of the above considerations, we respectfully pray this court to reconsider its judgment of February 11, 1938 and in its consequence to enter a new judgment reversing that of the District Court of San Juan.

San Juan, P. R., February 18, 1938.

JAMES R. BEVERLEY,
R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
Attorneys for Plaintiff-Appellant.

[Same Title.]

(By the Court at the proposal of Mr. Chief Justice del Toro.)

San Juan, Puerto Rico, March 31, 1938.

To hear the parties on the motion for reconsideration filed by appellant in this case, the twentieth day of April, 1938, is hereby set at 2 P. M. it being understood that—unless the parties petition differently—if the court reaches the conclusion that the reconsideration is proper, it will not only so declare, but will also decide the case finally, making now the suggestion to appellee that he should not limit himself to expound orally his arguments at the hearing, but that he should also set them down in writing.

It was thus decided by the court, as witness the signature of the chief justice. Mr. Justice Cordova Davila took no part.

EMILIO DEL TORO,

Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same Title.]

OPINION OF THE COURT

DELIVERED BY MR. CHIEF JUSTICE DEL TORO.

(ON MOTION FOR RECONSIDERATION.)

San Juan, P. R., July 13, 1938.

This case was decided on February 11th of this year. 52 P. R. R. 658, 52 P. R. R. . Plaintiff filed a lengthly motion for reconsideration and we heard the parties on the same orally and in writing on April 20th next. All the questions involved merit consideration and to them all we have given due study, reaching finally the conclusion that the reconsideration should be denied.

This deals with two essential points, to wit, admissions of defendant and the procedure followed in the collection of the compensations.

As to the first point, we have nothing to add to what we already said in our opinion of February 11th. We have again examined the stipulation in question and do not believe that acting in justice it should be construed as plaintiff insists it should.

The second point involves two questions. That of the retroactive effect of Act No. 45 of 1935, studied under the dispositions of Section 34, in regard to which nothing new is really said by appellant, and that of the procedure to be followed by the treasurer in the collection of the compensations, which is the one that made us hesitate and moved us to hear again the parties.

In the referred to opinion of this court of February 11th, *Texas Co.* v. *Sancho Bonet*, 52 P.R.R. 658, 667, 52 P.R.R. , it was said:

> "The fact that Act No. 45 of 1935 be the one applicable and not Act No. 85 of 1928, is of no consequence, because according to them both, the collection by the Treasurer is allowed as in case of a tax."

And in the motion for reconsideration, after quoting part of Section 15 of Act No. 45 of 1935, appellant says:

> "In what part of said Section and in what form is authority given to the Treasurer of Puerto Rico to collect these compensations by the summary procedure of notification, attachment and public sale? That Section only states that the Treasurer 'shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer . . .' Act of 1928 in which defendant tried to find justification in the court below provided in Section 25 that the Treasurer 'shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect as if it were a tax levied on such property . . .'
>
> "As taxes can be collected by distraint it is clear that under the Law of 1928 the compensations, which were given the same legal priority and effect of taxes, could be collected by distraint. But the Act of 1935 does not give them such legal effect or priority, and only states that the Treasurer shall collect them. That being the case it shall be taken that he can only collect them by an ordinary action."

We believe that the applicable law is the Act of 1935 so often cited, its dispositions controlling.

We have seen that plaintiff itself admits that under the dispositions of the former law—Act of 1928— the treasurer was authorized to collect the compensations as if these were taxes, *i. e.*, by the special summary procedure authorized by the statute. This simplifies the question.

Let us see what was ordained by the Act of 1928. Section 25 (Laws of 1928, page 862), provided:

> "In case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Industrial Commission shall determine proper compensation, plus expenses, incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property."

And the law now in force, Act of 1935, Section 15, (Laws of this year, page 292) provides:

> "In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses."

We believe there is no doubt that the Act of 1938 authorizes the collection by distraint proceeding and do not think that it can be concluded that by the amendments introduced to it by the law of 1935 the authority of the treasurer to collect a compensation by that procedure was withdrawn.

We are dealing with the execution of a final order handed by certain administrative organism in the exercise of its authority after due consideration of the facts and of the law, with a hearing or opportunity of a hearing to the interested parties, and against which recourse could have been taken to the courts of justice. By it certain person or entity is sentenced to pay a certain sum of money. And by both laws it is sent to the treasurer for its execution.

Act of 1928 states "who (the treasurer) shall assess said compensation, plus expenses", and Act of 1935, "who (the treasurer) shall collect from the employer such compensation and expenses". From the 1935 law the only words omitted are "shall assess", and correctly so because the treasurer never assessed or determined the award.

Act of 1928 states further "and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property", and the Law of 1935 "both of which shall constitute a lien on all the property of the employer". The words "with the same legal effect and priority as if it were a tax levied on such property" are omitted but in its stead there appears a provision which reads as follows:

> "That said compensation and expenses are hereby declared to be liens preferred over any other charge of lien for taxes or any other cause, with the exception of the mortgage credits, crop loans and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses."

What was done, then, in 1935, was to make more concrete the meaning of the general disposition in regard to the "same legal effect and priority as if it were a tax" contained in the Act of 1928.

The Supreme Court of Arkansas, in *State* v. *Gux Blass Co.*, 105 S. W. 2nd. 853, 858, said:

> ". . . in interpreting the amendatory statute, we ought to follow the well-etsablished rules of statutory construction, and one of those rules is that, where a statute is re-enacted in substantially the same form as the old one, the presumption should be indulged that the lawmakers intended no changes other than those clearly expressed in the language of the new statute."

If it is admitted that the treasurer had the authority and duty to collect the compensation by distraint in 1928, it is necessarily admitted that he still has that authority and duty in 1935.

That authority emanates from the very nature of his office, "The Treasurer shall collect and be the custodian of public funds . . . and perform such other duties as may be provided by law", as ordained by the Organic Act of 1917 in Section 15.

We have already seen that by virtue of both laws, Acts of 1928 and 1935, he was charged with the duty to collect the compensation now in discussion, the legal effects of which now specified continue to be the same of a tax, a duty which logically and as has been uniformly interpreted, he complies with following the procedure ordained by the Political Code, *i. e.*, by notification of the attachment of the property to the debtor which produces the same effect of a judicial judgment upon the attached property (Section 315, Political Code) and sale at public auction of the property under the law (Sections 335 to 344 of the Political Code).

What other procedure could and should have followed the treasurer in collecting moneys whose collection is ordained by law? When the Legislature ordained a different procedure—that of Act No. 102 of 1925 in force until 1928—it was not the treasurer the officer charged with collecting, it being provided that after the Workmen's Relief Commission awarded a compensation "shall so report to the Attorney General for him to bring suit against said employer in a court of competent jurisdiction for the collection of said sum".

Although we acknowledge that the Legislature could and should

have spoken more clearly, its action implies its aim with such strength, that we felt before and continue to feel justified in deciding that the procedure followed by defendant in the collection of the compensations in this case is authorized by law. The motion for reconsideration will be denied.

EMILIO DEL TORO,
Chief Justice.

[Same Title.]

ORDER.

San Juan, P. R., July 13, 1938.

For the reasons stated in the foregoing opinion, the motion for reconsideration is hereby denied.

It was thus ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[MEMORANDUM: Petition for appeal, allowed by Bingham, J., August 5, 1938; citation returnable September 4, 1938, service accepted and cost bond in the sum of $300 are here omitted. A. I. CHARRON, *Clerk.*]

[Title omitted.]

ASSIGNMENT OF ERRORS.

[Filed August 13, 1938.]

Now comes The Texas Company (P. R.) Inc., and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause, from the judgment of this court entered on the eleventh day of February, 1938, and the order of July 13, 1938, denying a rehearing:

I. The court erred in holding that defendant-appellee did not confess the ultimate facts of the injunction bill, and in not taking as confessed the ultimate facts of the injunction bill for the determination of this cause.

II. The court erred in not holding that plaintiff-appellant was an insured employer at the time of the accidental death of her three workmen described in the bill.

III. The court erred in not holding that the orders of the Workmen's Relief Commission of April 25, 1928 were erroneous, illegal and handed down without jurisdiction.

IV. The court erred in holding that plaintiff-appellant had had an adequate remedy at law to review the orders of the Workmen's Relief Commission of April 24, 1928, of which it never took advantage.

V. The court erred by completely disregarding Section 34 of Law No. 45 of April 18, 1935 of the Legislature of Puerto Rico, entitled "Workmen's Accident Compensation Act", which provides that the procedure to be followed in all pending workmen's compensation litigations or claims shall be in accordance with the laws in force at the time of the accident.

VI. The court erred in holding that the compensations herein could be legally collected by the Treasurer of Puerto Rico by distraint proceedings.

JAMES R. BEVERLEY,
ROUNDS, DILLINGHAM, MEAD & NEAGLE,
by RALPH S. ROUNDS,
Attorneys for Plaintiff-Appellant.

[Title omitted.]

TRANSLATOR'S CERTIFICATE.

I, B. Marrero Rios, official interpreter and translator of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the City of San Juan, Puerto Rico, this day of August, 1938.

B. MARRERO RIOS,
Official Interpreter and Translator of the Supreme Court of Puerto Rico.

[Title omitted.]

CLERK'S CERTIFICATE.

I, B. Marrero Rios, acting secretary-reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the order of the court.

I further certify that the translation of said papers and proceedings has been revised by the official translator and interpreter of this court, as shown by his certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the City of San Juan, Puerto Rico, this day of August, 1938.

B. MARRERO RIOS,
Acting Secretary-Reporter of the Supreme Court of Puerto Rico.

[SEAL]

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

On January 17, 1939, this cause came on to be heard, and was fully heard by the court, Honorable Scott Wilson, Circuit Judge, and Honorable Elisha H. Brewster, District Judge, sitting, and submitted on briefs to Honorable George H. Bingham, Circuit Judge.

Thereafter, to wit, on March 25, 1939, the following Opinion of the Court was filed:

OPINION OF THE COURT.

March 25, 1939.

BINGHAM, J. This is an appeal from a judgment or decree of the Supreme Court of Puerto Rico affirming the action of the District Court of San Juan in dismissing the plaintiff's bill.

The bill was brought November 5, 1936, to enjoin the Treasurer of Puerto Rico from enforcing, by distraint, orders of the Workmen's Relief Commission of April 24, 1928, wherein the Relief Commission awarded compensation to the dependants of each of three laborers accidentally killed on February 12, 1926, while working on a concrete platform by the side of a warehouse and wharf belonging to the plaintiff, cleaning the platform from earth and stones that had fallen upon it from a natural wall formed by earth, when the upper part of it slid and caused their death.

In the bill it was alleged that the orders of the Workmen's Relief Commission, awarding compensation to the beneficiaries of each deceased workman, declared therein that "plaintiff was not an insured employer", and directed that the administrative secretary of the Relief Commission "prepare the corresponding liquidations" and send the same to the Attorney General of Puerto Rico with a copy of each order, the orders directing him to collect the respective amounts from the plaintiff pursuant to Section 7 of Act No. 102, of September 1, 1925. It then alleged the liquida-

tions made by the administrative secretary of the Commission relating to the death of each of the three employees, as follows:

Case of Rodulfo Suarez.

Compensation for death	$2,000.00
Administrative expenses, 12 per cent.	240.00
Total	$2,240.00
Less advances made by employer	45.33
Total	$2,194.67

Case of Isidro Villoch.

Compensation for death	$2,000.00
Administrative expenses, 12 per cent.	240.00
Total	$2,240.00

Case of Isidro Perez.

Compensation for death	$2,000.00
Administrative expenses, 12 per cent.	240.00
Total	$2,240.00

It was alleged in paragraph 3 of the bill, that the above orders, awarding compensations against the plaintiff, charging it with their payment and declaring that it was an uninsured employer, were illegal and without authority in that the plaintiff was an insured employer and had complied with all the requisites of the law, to wit: (par. 2 of the bill) "that on or before July 15, 1925" and "in pursuance of Section 13 of the Workmen's Accident Compensation Act" then in force, it "filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from the plaintiff the corresponding premium, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since

the date in which it filed the above mentioned record or statement, until the 15th of July, 1926."

It was further alleged in paragraph 5, that it had "paid the premium" for the year in "which the accident occurred".

In paragraph 4 it was alleged that on February 12, 1926 (about seven months after filing the duplicate statement with the Workmen's Relief Commission and the assessment and collection from the plaintiff of the premiums for the fiscal year running from July 15, 1925 to July 15, 1926) Rodulfo Suarez, Isidro Villoch and Isidro Perez, laborers employed by the plaintiff, died as a result of an accident incident to their work which occurred while they were working together with other laborers, as employees of the plaintiff cleaning up the concrete platform, as above stated; and that their "usual employment" was "to help in the embarkment and disembarkment of gasoline drums, the filling of same, placing them in order, and cleaning the warehouse and platform."

Paragraph 1 of the bill alleged that the plaintiff was a Puerto Rican corporation "engaged in the wholesale business of buying and selling" petroleum products, "in which business it employs and actually employed during the dates to which this bill refers, besides its office personnel, various laborers, all of which were insured under the workmen's compensation in force on the dates later referred [to] herein."

In the seventh paragraph it was alleged that on June 2, 1928 (some thirty-nine days after the entry of the orders of April 24, 1928), the plaintiff brought petitions for certiorari with a view to testing the validity of the orders declaring that the plaintiff was not insured; and that in the District Court and in the Supreme Court, on appeal they were denied for lack of jurisdiction.

In paragraph eight it was alleged that between April 24, 1928, and September 4, 1936, no attempt was made by the Attorney General of Puerto Rico (the one having the legal authority) "to collect the compensations awarded by the above referred to orders, and no legal action has been started to collect the same under Section 7 of the Workmen's Accident Compensation Act, No. 102, of

1925"; but on September 14, 1936 (paragraph 9), the present Industrial Commission (created under Act 45 of April 18, 1935, a successor of the Workmen's Relief Commission created under Act 102 of September 1, 1925) handed down an order in the case of Rodulfo Suarez, directing the defendant, Treasurer of Puerto Rico, to levy an attachment upon the property of the plaintiff and collect the compensation awarded his beneficiaries April 24, 1928, in the sum of $2,194.67; and that the Treasurer, after requesting the plaintiff to pay the same and threatening summarily to attach its property, on October 27, 1936, seized the plaintiff's truck, notifying it that if it did not pay said amount, plus $1.00 costs, by November 6, 1936, the property attached would be sold at public sale; that the sale would cause the plaintiff irreparable damage unless enjoined; and that it was the intention of the Industrial Commission and the defendant Treasurer to pursue an identical course in the collection of the other two compensations unless enjoined.

And in the tenth paragraph it was alleged that the order of the Industrial Commission of September 14, 1936, and the acts of the defendant in attempting to collect said compensation by summary attachments were illegal, arbitrary and abusive for the following reasons:

> "(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925."

(b) That if the order of April 24, 1928 was legal and valid, the procedure to be followed to collect the compensation awards was to send the orders to the Attorney General for him to institute the proper action in a court of competent jurisdiction against the

employer to recover the awards as provided in Section 7 of the Act 102 of 1925; that Section 34 of Act No. 45 of April 18, 1935, an Act in force when the order of the Industrial Commission of September 14, 1936, was made, so required. And for other reasons not now necessary to mention.

In paragraph 11 it was alleged that the plaintiff had no adequate remedy at law and would suffer irreparable loss if the defendant was not restrained.

In the District Court of San Juan the case was submitted on the following stipulation:

"A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.

"B. The facts alleged in the bill thus confessed, the parties submit to the court the present case under the following propositions of law, the determination of which they both understand decides this case."

The defendant maintains (1) "that the Supreme Court of Puerto Rico having decided against the plaintiff the certiorari cases Nos. 6986, 6987 and 6988 to which reference is made in paragraph 7 of the bill, the injunction now prayed for does not lie"; (2) that the "plaintiff not having taken recourse of the remedy provided by Section 9 of Act 102 of 1925 to review the orders of the Workmen's Relief Commission, the writ of injunction now prayed for does not lie"; (3) "that the orders of the Workmen's Relief Commission of April 24, 1928, described in the bill do not have the nature of final judgments under the dispositions of the Code of Civil Procedure in force, providing that a final judgment will not be executed five years after having become final, for which reason the statute of limitation has not run against the right to execute said orders, an injunction, therefore, not lying to enjoin their execution"; and (4) "that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in

Section 25 of Act 85 of 1928, and not, as maintained by plaintiff, that specified by Section 7 of Act 102 of 1925."

"C. Plaintiff maintains the negative of all the propositions as maintained by the defendant, as above expounded."

"And, in order to save time and efforts, the parties now ask the court to consider the present case as tried and submitted by this stipulation, without a previous setting of the same in the general calendar."

In the District Court the bill was dismissed and, on appeal to the Supreme Court, it was likewise dismissed. In the latter court it was dismissed for two reasons: (1) because under Section 9 of the Workmen's Compensation Act of September 1, 1925, and which took effect upon its approval, the plaintiff could have appealed from the orders of the Workmen's Relief Commission to the District Court, in which orders it was declared that the plaintiff was not an insured employer, and had the question whether it was or was not an insured employer determined under Section 9, which provides:

"Section 9. Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act."

Paragraph 3 of Section 2 of that Act also provides:

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided*, that pursuant to the provisions of this Act *compensation shall be paid to the injured laborers* who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employ-

ment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, *payable from the government trust fund.*"

Section 9, in terms, limits the employer's right of appeal to one from a decision of the Workmen's Relief Commission "when such decision is *to the effect* that the accident is one for which compensation is granted under the provisions of the Act"; and those provisions when read in connection with paragraph 3 of Section 2, mean that the employer may appeal from a decision of the Workmen's Relief Commission when that decision is to the effect that the accident is one for which compensation is granted under the provisions of the Act, payable out of the trust fund. And without regard to paragraph 3 of Section 2, it is certain that under the orders of the Workmen's Relief Commission of April 24, 1928, the order in question is not a decision to the effect that the accident was one for which compensation is granted under the act, for that order stated that the plaintiff was an uninsured employer and directed that the compensation should be collected by a suit brought by the Attorney General against the plaintiff—a decision "to the effect" that the accident *is not* one for which compensation is granted under the Act. This being so the plaintiff had no right of appeal under Section 9 from the orders of April 24, 1928, to review the question whether or not it was an uninsured employer.

It is also apparent that there was no occasion for giving one declared by the Workmen's Relief Commission to be an uninsured employer an appeal under Section 9 to contest that question, for the last paragraph of Section 7 of the Act provides:

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the

same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum."

In this way the Legislature provided a remedy by which the employer, the plaintiff here, could plead in defense of the action that he was not an uninsured employer and have the question whether he was or not determined by a court of competent jurisdiction.

We therefore conclude that the Supreme Court, if it intended to rule that the plaintiff had a remedy by appeal under Section 9 and that the remedy thus afforded was as complete and adequate as the one sought by the bill (which it did not hold unless by inference), it was clearly wrong in so holding. In any event, at the time the orders of April 24, 1928, were made, the plaintiff had an adequate remedy at law by way of defense under Section 7 of the Act, whether it had such a remedy by appeal under Section 9 or not. Whatever remedy by appeal it may have had was, after the lapse of thirty days, lost in reliance upon Section 7 and the action of the Relief Commission in sending the compensation orders to the Attorney General for collection by suit in the proper court. Under these circumstances, if the plaintiff's bill is not retained and the Treasurer restrained from collecting the orders by distraint, the plaintiff will be deprived of its remedy by defense and fraud will be practiced upon it. This equity will not permit. The bill should have been retained and the fact redetermined whether the plaintiff was or was not insured, for that is a jurisdictional fact open to redetermination in this proceeding. *Crowell v. Benson*, 285 U. S. 22, 54–62.

On September 14, 1936, nearly eight years after the orders were made and sent to the Attorney General for collection, at which time no suit had been brought by the Attorney General, and when the Workmen's Relief Commission, created under the Act of 1925, and the Industrial Commission created under the Act of 1928, had ceased to exist, the Industrial Commission, created under Act 45

of April 18, 1935, without any authority, so far as we are able to discover, recalled from the Attorney General the orders of the Workmen's Relief Commission of April 24, 1928, directing the Attorney General to institute "proper action in a court of competent jurisdiction against said employer to recover the aforesaid sums," and having recalled them directed the Treasurer to collect the awards contained in these orders by distraint under Section 15 of Act No. 45 of 1935, as if that section had to do with the collection of awards for compensation made by the Workmen's Relief Commission April 24, 1928, under the prior Act of 1925. That section of the Act of 1935 reads as follows:

> Section 15. In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the *Manager of the State Fund shall determine* the proper compensation plus the expenses in the case, and shall certify *its decision* to the Treasurer of Puerto Rico, who shall collect from the employer such compensation and expenses, both of which shall *constitute a lien on all the property of the employer; Provided,* that said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exceptions of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; *Provided, further,* that the [Industrial] Commission shall grant the employer as well as the workman or employee in the case an opportunity to be heard and defend themselves, conforming as far as possible to the practice observed in the district courts; and *Provided, also,* that after the parties have been summoned by such means as the Commission may adopt, should they, or either of them, fail to appear for hearing and defense, it shall be understood that such party or parties waive their rights, and the Commission may decide the case in default, without further delay . . . "

The provisions of Section 15 are not applicable to awards of compensation by the Workmen's Relief Commission for an accident to a workman or employee in February, 1926, when the Act of 1925 was in force.

The Manager of the State Fund, who, under the Act of 1935, is *to determine* the compensation and expenses in a given case arising under that law and certify its *determination* to the Treasurer of Puerto Rico for collection, is not the Workmen's Relief Commission that *determined* the compensation and expenses called in question in the orders of April 24, 1928. On the contrary the Manager of that Fund is a new administrative officer created under Act No. 45 of 1935, and his duties are limited to compensation cases arising under it. Clearly Section 15 of the Act of 1935 did not authorize the Manager of the State Fund, or the Industrial Commission created by that Act, to redetermine the awards made by the Workmen's Relief Commission under the Act of 1925 and certify them to the Treasurer for collection by distraint, and the allegations of the bill refute their ever having attempted to do so. All they did was to recall the old orders of April 24, 1928, from the Attorney General and order their collection by the Treasurer by distraint. Nor does it make the awards of compensation by the Workmen's Relief Commission under the Act of 1925 preferred over other liens burdening the property of the employer. *Domenech* v. *Lee*, 66 Fed. (2d) 31, 34, 35. And the enforcement of its provisions with relation to the orders of the Relief Commission of April 24, 1926, would also deprive the employer (the plaintiff here) of the right given him under Section 7 of the Act of 1925 to plead in defense to the action there authorized that he was an insured employer and contest the question judicially.

The defendant, in the stipulation on submission of the case, in B(4) contends "that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in Section 25 of Act 85 of 1928." Section 25 of Act No. 85 of 1928 does not differ materially from the provisions of Section 15 of Act No. 45 of 1935, except that it may be

that it gives greater priority to the lien than Section 15 of the Act of 1935.

The provisions of the Act of 1925, in conflict with those of the Act of 1928, are repealed by Section 57 of the latter Act, subject to the saving clause in Section 48 thereof, providing: "The provisions of this act [1928] shall in no way affect pending litigation relative to workmen's compensation under previous laws", thereby leaving Section 7 of the Act of 1925 in effect for the collection of the orders of April 24, 1928. And Act No. 85 of 1928, is, in Section 51 of the Act of 1935, "expressly repealed, with the exception of the provisions of Sections 40 to 47, both inclusive, of this Act [1935], in regard to the decision and liquidation of cases pending under said Act", of 1928.

The provisions contained in Sections 40 to 47 relate to the liquidation of cases pending under the Act of 1928, with which the compensation orders of April 24, 1928, having nothing to do, for they originated and were imposed under the Act of 1925, before the Act of 1928 went into effect.

Furthermore Section 34 of the Act of 1935 contained a saving clause to the effect that "the provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident."

The Supreme Court concluded that, when the Workmen's Relief Commission; under the Act of 1925, made the orders assessing the compensations in question and sent them to be collected by the Attorney General by suit in a court of competent jurisdiction, the litigation or prosecution of the claims was then terminated. But we think that when the claims were sent to the Attorney General to bring suit against the plaintiff, the prosecution of the claims had just started, not terminated, and that the Supreme Court was clearly wrong in holding that they were terminated.

The Industrial Commission created by the Act of 1925, was

without authority to recall the orders of the Workmen's Relief Commission of April 24, 1928, and direct their collection by distraint, thus depriving the plaintiff of its legal remedy of defense to the suit for their collection provided for in Section 7 of the Act of 1925, and the plaintiff is entitled to its remedy in equity, for otherwise it would be subject to irreparable damage through the distraint of its property by the Treasurer.

And this is so without regard to whether the finding of the Workmen's Relief Commission in its orders of April 25, 1928—that the plaintiff was an uninsured employer—was jurisdictional or not. We think, however, that the finding of the Workmen's Relief Commission of April 24, 1928, that the plaintiff was uninsured, was a condition precedent to its exercise of jurisdiction to make the compensation awards against the plaintiff, and that, being a jurisdictional fact, it is open to collateral attack in this proceeding. *Crowell* v. *Benson*, 285 U. S. 22, 54–62.

The judgment or decree of the Supreme Court of Puerto Rico is vacated and the case is remanded to that court with directions to remand the same to the District Court of San Juan, ordering the latter court to vacate its judgment or decree and issue an injunction restraining the Treasurer of Puerto Rico from collecting the compensation awards of April 24, 1928, by distraint upon the appellant's property. The appellant recovers costs in this court and in both of the courts below.

On the same date, to wit, March 25, 1939, the following Judgment was entered:

JUDGMENT.

March 25, 1939.

This cause came on to be heard January 17, 1939, upon the transcript of record of the Supreme Court of Puerto Rico, and was argued by counsel.

On consideration whereof, It is now, to wit, March 25, 1939, here ordered, adjudged and decreed as follows: The judgment or decree of the Supreme Court of Puerto Rico is vacated and the

case is remanded to that court with directions to remand the same to the District Court of San Juan, ordering the latter court to vacate its judgment or decree and issue an injunction restraining the Treasurer of Puerto Rico from collecting the compensation awards of April 24, 1928, by distraint upon the appellant's property. The appellant recovers costs in this court and in both of the courts below.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on April 25, 1939, mandate was stayed until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 69, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including April 28, 1939, in the cause in said court numbered and entitled,

No. 3380.

THE TEXAS COMPANY (P. R.), INC., PLAINTIFF, APPELLANT,

v.

RAFAEL SANCHO BONET, TREASURER, DEFENDANT, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-eighth day of April, A. D. 1939.

[SEAL] ARTHUR I. CHARRON, *Clerk.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler and Mr. Justice Stone took no part in the consideration and decision of this application.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, Treasurer,
Petitioner,

vs.

THE TEXAS COMPANY (P. R.), INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

SUBJECT-INDEX

SUBJECT INDEX *(Continued)*

TABLE OF CASES

STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, Treasurer,
Petitioner,

vs.

THE TEXAS COMPANY (P. R.), INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Rafael Sancho Bonet, Treasurer of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, entered in this cause on March 25, 1939, reversing and vacating the judgment of the Supreme Court of Puerto Rico and remanding the case to that court with directions to remand it to the District Court of San Juan, and to order the latter court to vacate its judgment or decree and to issue an injunction restraining the Treasurer of Puerto Rico from collecting Workmen's Compensation awards of April 24, 1928, by distress upon the Texas Company's property.

QUESTION PRESENTED

The single question presented is whether the Circuit Court of Appeals was right in holding that the judgment of the Supreme Court of Puerto Rico interpreting the local Puerto Rican statute, the Workmen's Compensation Act of its Legislature, was so "clearly erroneous" as to require reversal by the Circuit Court of Appeals, because of the Supreme Court of Puerto Rico's holding that the provision of the local statute [Sec. 9, as amended by Act No. 102, September 1, 1925] that

> "the employer may appeal from any decision of the Commission when such decision is to the effect that the accident is one for which compensation is granted under this Act,"

gave the right of appeal broadly to "the employer" in any case where the Workmen's Relief Commission had held "that the accident is one for which compensation is granted under this Act", *regardless of whether the compensation* assessed by the Commission *was "payable from the government trust fund"* [Sec. 2, Par. 3 of the Act; "Insured employer"] *or was assessed* by the Commission *against the employer*-[Sec. 7, last Par., and Sec. 20, "Uninsured employer"], as in the present case.

The Circuit Court of Appeals, overruling the Supreme Court of Puerto Rico, holds (R. 62-64) that the provision of section 9 of the Act giving the employer the right of appeal, as above quoted, must be read as being limited solely to the case where the compensation awarded is "payable from the government trust fund", and not as extending to the case where the compensation awarded is assessed against the "uninsured employer", to be paid by him [Sec. 7 and Sec. 20, *supra*]; and that the insular Supreme Court's interpretation of the Act as extending the right of appeal likewise to the "uninsured employer" in the latter case is so "clearly erroneous" as to require reversal, de-

spite the established rule of the respect to be paid to the decision of a Territorial court of last resort interpreting a local Territorial statute.

So holding, the Circuit Court of Appeals decided that the Texas Company, appellant there, respondent here, which had not taken any appeal from the Workmen's Relief Commission's order assessing against it, as an "uninsured employer", the compensation awarded upon the death of three of the company's employees, was entitled to maintain this collateral attack upon the Commission's award by this injunction suit, on the ground that the company had never had any right of appeal under the statute, and, therefore, no adequate remedy at law.

The other conclusions of the Circuit Court of Appeals follow upon this basic holding.

PETITIONER'S POSITION

Petitioner believes that the Circuit Court of Appeals was wrong in this; that the construction placed by the insular Supreme Court upon this local statute, allowing the right of appeal to the employer in any case where the Commission's decision is to the effect that the accident is one for which compensation is granted under the Act,—[regardless of whether the compensation is to be paid out of the government trust fund, as for an "insured employer", or by the employer himself in the case where, as here, the Commission holds him to be an "uninsured employer"],—was not so "clearly erroneous" as to require reversal by the Circuit Court of Appeals in the face of the rule of the respect to be paid to decisions of local Territorial supreme courts construing local Territorial statutes; but, on the contrary, was not at all an unreasonable interpretation of the statute, but was right and reasonable, and should have been upheld; and that, consequently, the judgment of the insular Supreme Court that the Texas Company, not having availed itself of the right of appeal in this case, could not afterwards maintain this

collateral attack upon the Commission's award, by this injunction suit, was right and should be affirmed, and the contrary judgment of the Circuit Court of Appeals reversed.

STATUTES

Pertinent statutes are in the Appendix (*infra*, pp. 33-43).

STATEMENT OF THE CASE

As indicated in the "Question Presented" above (*ante*, pp. 2-3) this was an injunction suit by the Texas Company in the insular District Court of San Juan against the Treasurer of Puerto Rico to enjoin collection by distraint of an award of the Workmen's Relief Commission of Puerto Rico [former Commission under the old 1918 Act as amended by Act No. 102 of 1925, with earlier amendments]. A fuller statement is in the accompanying Brief in Support of this Petition ["Statement of the Case", *infra*, pp. 6-10].

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals overruling the insular Supreme Court's interpretation of a local insular statute of Puerto Rico is believed to be in conflict with the applicable decisions of this court establishing the rule as to the respect to be paid to such decisions of local Territorial courts of last resort interpreting local statutes, particularly with the recent decision of this court, March 27, 1939, in No. 498 at the present term, *Rafael Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, as well as with the earlier decisions there cited: *Nadal* v. *May*, 233 U. S. 447, 454; *Santa Fe Ry.* v. *Friday*, 232 U. S. 694, 700; *Phoenix Ry. Co.* v. *Landis*, 231 U. S. 578, 579; *Villaneuva* v. *Villa-*

neuva, 239 U. S. 293, 299; *Waialua Co.* v. *Christian*, 305 U. S. 91, 109; *Inter-Island Co.* v. *Hawaii*, 305 U. S. 306, 311; *Diaz* v. *Gonsalez*, 261 U. S. 102, 105, 106; *Cordova* v. *Folgueras*, 227 U. S. 375, 378, 379.

That rule embodies an important principle of federal law with relation to the administration of the Territories. It is of public importance that its spirit be not disregarded, nor minimized, as is done by this decision of the Circuit Court of Appeals.

Wherefore, it is respectfully requested that this petition for a writ of certiorari be granted.

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the insular District Court (R. 14-19, and order denying rehearing, R. 25) is not officially reported. The opinions of the Supreme Court of Puerto Rico, February 11, 1938, affirming the judgment of the District Court denying the injunction (R. 26-34), and July 13, 1938, denying reconsideration (R. 48-53), are not yet reported in the English edition of the Puerto Rico Reports, but are reported in the Spanish edition, "Decisiones de Puerto Rico" (52 P. R. Dec. 658; and [Advance Sheets] 53 P. R. Dec. 475). The opinion of the Circuit Court of Appeals is reported in 102 F. (2d) 710.

JURISDICTION

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered on March 25, 1939.

QUESTION PRESENTED

This is stated in the Petition (*ante*, pp. 2-3).

STATUTES INVOLVED

As is indicated in the Petition (*ante*, p. 4), pertinent statutes are in the Appendix (*infra*, pp. 33-43).

STATEMENT OF THE CASE

The respondent here, the Texas Company, plaintiff in the District Court and unsuccessful appellant in the Supreme Court of Puerto Rico, appealed to the Circuit Court of Appeals from the judgment of the insular Su-

preme Court affirming that of the District Court of San Juan, which had dismissed the plaintiff's bill for injunction against the Treasurer of Puerto Rico, defendant there and petitioner here. The Circuit Court of Appeals reversed the insular courts, and directed that the injunction be granted. The bill sought to enjoin the Treasurer from enforcing by distraint an order of the Workmen's Relief Commission of Puerto Rico entered eight years previously, requiring the Texas Company to pay compensation assessed against it by the Commission on account of the deaths of three laborers accidentally killed on February 12, 1926, while working "in a concrete platform by the side of a warehouse and wharf belonging to plaintiff in the Harbor of Guayanilla, Puerto Rico" (*Complaint, Par.* 4; R. 2), cleaning the platform from earth and stones that had fallen upon it by the side of a natural wall formed by earth, when

> "the upper part of said wall land-slided causing said workmen injuries of such a nature that they were retrieved dead."

It is alleged that the Commission directed that the amounts assessed as compensation be paid by the Texas Company, the employer, on the ground (*Complaint, Par.* 5; R. 2) that it "was not an insured employer" under the Workmen's Compensation Act.

The Company did not appeal from the Commission's order; but, instead, undertook to attack it collaterally; first by certiorari, and then, secondly, by this injunction suit. The certiorari proceedings begun in the District Court of San Juan, on June 2, 1928 (*Complaint, Par.* 7; R. 3) about six weeks after the date of the Commission's order of April 24, 1928, were dismissed by the District Court for want of jurisdiction; and its judgment was affirmed by the insular Supreme Court, on the same ground of lack of jurisdiction in certiorari proceedings,

on January 23, 1930 (*Texas Co.* v. *Workmen's Relief Commission*, 40 P. R. Rep. 456).

The Company not having paid, the Industrial Commission of Puerto Rico, the successor to the former Workmen's Relief Commission, entered an order on September 14, 1936 (*Complaint, Par.* 9; R. 4), directing the Treasurer to levy attachments on the Company's property, in order to collect the amount of the compensation. The Treasurer attached a truck; and the Company again sought to attack the Workmen's Relief Commission's order collaterally, this time, as above stated, by this injunction suit to enjoin the attachment proceedings.

The District Court granted a temporary injunction (R. 8-11), but dissolved it at the hearing, dismissed the Bill (R. 14-19), and denied reconsideration (R. 25); and the District Court's judgment was unanimously affirmed by the insular Supreme Court (R. 26-34). [Mr. JUSTICE CORDOVA DAVILA took no part, because of the illness from which he subsequently died]. The Court allowed a reargument (R. 48); but, in a second opinion, July 13, 1938, adhered to its former decision, and formally denied the motion for reconsideration (R. 48-53).

The complaint **alleges as facts** (R. 2-3):

> "3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921 (p. 491)[1], that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premium,"

and

> "4. That on February 12, 1926, Rodulfo Suarez, Isidro Villoch and Isidro Perez, laborers employed

[1] Appendix, Footnote 3, *infra*, pp. 38-39.

by plaintiff, died as a result of an accident incident to their work which occurred while they were working together with other laborers, as employees of plaintiff, in a concrete platform by the side of a warehouse and wharf belonging to plaintiff in the harbor of Guayanilla, Puerto Rico, the usual employment of deceased being to help in the embarkment and disembarkment of gasoline drums, the filling of same, placing them in order, and cleaning the warehouse and platform, receiving from plaintiff for said work daily wages fluctuating from $1.50 to $1.75. Said accident occurred in the following manner: About 8 o'clock in the morning of said day, as deceased were cleaning the said platform from earth and stones that had fallen upon it by the side of a natural wall formed by earth, the upper part of said wall land-slided causing said workmen injuries of such a nature that they were retrieved dead.

"5. That the Workmen's Relief Commission investigated said accident and after holding public hearings in the three cases, on April 24, 1928, * * * (R. 2-3), handed down orders declaring that plaintiff was not an insured employer, * * * ; and by said orders awarded compensations of $2,000 to the dependents of each of the deceased and ordained its administrative secretary to prepare the corresponding liquidations and to send to the Attorney General of Puerto Rico a copy of each one of the orders so that said officer proceed, under Section 7 of the law then in force (Act No. 102 of 1925), to collect from plaintiff payment of the resulting amounts."

It also alleges **the pleader's conclusions** that:

A. As a result of the facts alleged in Paragraph 3 of the Complaint as above quoted, *the pleader concludes* (Par. 3; R. 2).

"for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926;" and

B. *The pleader concludes* that the Workmen's Relief Commission's orders of April 24, 1928, described in Paragraph 5 of the Complaint as above quoted, were handed down (Par. 5; R. 2-3),

> "arbitrarily and illegally * * *, although it was a matter of record in the said Commission that plaintiff was insured, having complied with all the requisites of the law as above alleged and having paid the premium corresponding to the year within which said accident occurred."

The case was submitted to the District Court for trial upon a "Stipulation of Facts and Submittal of the Case" (R. 12-13), by which it was agreed that

> "*Defendant confesses the ultimate facts* of the bill, *except the conclusions of fact or of law* that it might contain" (*Italics supplied*),

and submitted questions of law for the Court's determination.

The insular Supreme Court (R. 29-30) upheld the construction put upon this stipulation in the defendant Treasurer's brief in that Court, that

> "It is undisputable that *what was admitted* by defendant by said stipulation *were the facts* which occurred and which gave origin to all this proceeding since its inception. *The question* whether the Order of the Workmen's Relief Commission is or is not valid *is not a question of fact* but of law exclusively." (*Italics supplied*)

PETITIONER'S POSITION

Petitioner's primary position here has been stated in the Petition ("Question Presented" and "Petitioner's Position", *ante*, pp. 2-4).

As to other questions discussed in the Circuit Court of Appeals and in the insular courts, it is the position of this petitioner, the Treasurer of Puerto Rico, that:

1. The allegations of facts (*as distinguished from the pleader's conclusions*) contained in the plaintiff company's bill of complaint, wholly fail to demonstrate that the order of the Workmen's Relief Commission was without jurisdiction, or even that (*as the plaintiff company claims*) it was necessarily erroneous on its face; because (a) the allegations of the Bill of Complaint wholly ignore the *proviso* which was contained in Section 13 of the Workmen's Compensation Act in force at the time,—both as it stood on July 15, 1925, the date on which plaintiff alleges (*Complaint, Par.* 3; R. 2) that it filed its statement under the Act with the Workmen's Relief Commission, under the law as amended by Act No. 61 of 1921 (Laws of 1921, p. 490; Appendix, *infra,* Footnote 3, pp. 38-39), and also as it stood on the date of the accident, February 12, 1926, under the later amendatory Act of September 1, 1925, which had meantime taken effect (Laws of 1925, pp. 938-940 (Appendix, *infra,* pp. 36-38)),—prescribing:

> "*Provided,* That every employer employing workmen covered by this Act *for any term or part of a semester,* shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference"; (*Italics supplied*)

and also because (b) the allegations of plaintiff's Complaint likewise wholly ignore the further provision of Section 13 of the Workmen's Compensation Act, as amended by the amendatory Act of September 1, 1925, *supra,*

which, under the emergency clause of that Act (Section 5; Laws of 1925, p. 946; Appendix, *infra*, p. 41), had gone into effect on September 1, 1925, immediately upon its approval, and which did away with the former more lenient provision for the employer (*upon which plaintiff's bill of complaint is apparently bottomed*) whereby his insurance had become effective immediately upon filing the statement with the Commission under Section 13 of the Act, as it stood under the amendments of 1921 (Laws of 1921, p. 490; Appendix, Footnote 3, *infra*, pp. 38-39); and substituted for it the more drastic provision **that the insurance should not become effective until the employer had *actually paid* the premiums,**—the amended provision reading (Laws of 1925, p. 940; Appendix, *infra*, p. 37):

> "The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission, *accompanied by the amount of the assessment* corresponding to the percentage of wages declared in said statement in accordance with the rates fixed by the Commission." (*Italics supplied*)

In view of the presumption of *omnia rite acta* which necessarily attaches to the official proceedings of a *quasi*-judicial body such as the Workmen's Relief Commission, especially as against a collateral attack such as the present injunction suit, *it is plain that the plaintiff-respondent here, before it can claim error,—and far less, nullity,—in the Commission's order, is bound to foreclose the existence of every circumstance which might support the Commission's order.*

The present bill of complaint fails to measure up to that requirement. *Non constat* but that:

A. These "laborers employed by plaintiff" (Par. 4; R. 2), "receiving * * * daily wages fluctuating from $1.50 to $1.75", who were killed on February 12, 1926, by this

landslide while cleaning the platform "from earth and stones that had fallen upon it", may well have been employed by the plaintiff company within the meaning of the above-quoted *proviso* of Section 13 of the Act,

> "for any term or part of a semester",

and the plaintiff company may have failed to file the supplemental sworn statement required by that *proviso* covering their wages, or may have failed actually to pay the extra premium payment required by the *proviso* upon that supplemental statement.

[Such failure on the plaintiff company's part may easily have been due either simply to negligence; or else on the other hand to a mistaken belief on the part of the plaintiff company's officials, with which the Workmen's Relief Commission may have disagreed, that these laborers cleaning that platform on that day may have been in the category of

> "those whose labor is of a merely accidental character",

and who are, therefore, "expressly excluded" from the benefits of the Act (Sec. 30; p. 946, Laws of 1925; *Appendix, infra,* p. 41);—and hence the plaintiff may have thought it unnecessary to report them to the Commission in a sworn statement, or to pay the premium on their wages. Either supposition is sufficient to support the Commission's order finding that,—at least as to those laborers,—the Company was not an "insured employer".]

B. *The Company may not actually have paid the premium assessments prior to February 12, 1926, the date of the accident,*—either on its original statement which it alleges it had filed on July 15, 1925, or on the supplemental statement covering these laborers on the dock who were killed that day (if any such supplementary statement had

been filed at all, under the *proviso* of Section 13 of the Act for those laborers for a short "term or part of a semester".) *The bill of complaint fails to allege any date* upon which (*or before which*) the premiums were actually paid.

Upon either of these possible hypotheses, either "A" or "B", the plaintiff company would not have been an "insured employer" on February 12, 1926, within the meaning of the Act; but, to the exact contrary, an *uninsured employer* (at least in relation to those laborers who were killed), just as the Commission found it to be; since the Act as amended on September 1, 1925; and in force at the date of the accident, expressly required that the employer, in order to have the status of an "insured employer", *should have done all three of these things*, viz: (1) Filed its annual statement on or before the preceding July 15; (2) Filed a supplemental statement (or statements) covering the employment of additional laborers for any short "term or part of a semester"; and (3) have actually *paid* the premiums assessed, both (a) upon the annual statement of July 15, and also (b) upon the supplementary statement (or statements) covering the short-term laborers for "any term or part of a semester".

Until, or unless, it had done all of those things, it was not an "insured employer" under the Act.

As above pointed out, this plaintiff-respondent company, in this collateral attack upon the Commission's order, is bound, in order to succeed, to negative all possible hypotheses upon which the order might be sustained. It has not done so. The Bill of Complaint is wholly silent on all these matters. On its face, therefore, the bill fails to sustain the plaintiff's claim that the Commission's order was necessarily erroneous; far less, that it was a "nullity" that may be simply disregarded upon a collateral attack, such as by this injunction suit.

2. In relation to other matters discussed in the lower courts, appellee's position is stated in the "Summary of Argument" (*infra*, pp. 15-16).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Question Presented" and "Petitioner's Position" in the Petition (*ante*, pp. 2-4). As there indicated, the primary error of the Circuit Court of Appeals was in overruling the insular Supreme Court's interpretation of the local Territorial statute.

SUMMARY OF ARGUMENT

The Insular Supreme Court's interpretation of section 9 of the Puerto Rican Workmen's Compensation Act as amended by the Act of September 1, 1925; as to the scope of the appeal allowed to the employer from the Commission's awards of compensation for death or injuries to employees, was not unreasonable, nor "clearly wrong". On the contrary it was reasonable and right, and should not have been disturbed by the Circuit Court of Appeals.

The allegations of facts (*as contra-distinguished from the pleader's conclusions*) contained in the plaintiff-respondent company's Bill of Complaint wholly fail to demonstrate that the Commission's order was without jurisdiction, or even that it was necessarily erroneous on its face, and are therefore wholly insufficient to support this collateral attack upon it by this injunction suit; since, in view of the presumption of *omnia rite acta* which necessarily attaches to the official proceedings of a *quasi*-judicial body such as the Workmen's Relief Commission, as against such a collateral attack upon it, it is plain that the plaintiff-respondent here, before it can claim error,—*and far less, nullity*,—in the Commission's order, is bound to foreclose the existence of every circumstance which might reasonably support the Commission's order; which the Bill of Complaint here fails to do.

Hence, since the Commission's decision was upon a question within its jurisdiction, it may not be assailed by collateral attack, by this injunction suit.

Plaintiff had a plain, adequate and complete remedy at law by appeal from the Commission's order, as was held by the insular Supreme Court.

The Treasurer's procedure to enforce payment by the Texas Company in accordance with the orders of the Workmen's Relief Commission and the supplemental orders of its successor, the present Industrial Commission, is in accordance with the provisions of the local statutes, and is correct, as was held by the insular Supreme Court. The decision of the Circuit Court of Appeals to the contrary, overruling the insular Supreme Court, is based upon and follows the Circuit Court's erroneous holding in relation to the primary question of the scope of the employer's right of appeal under section 9 of the 1925 Act, as to which the Circuit Court wrongly overruled the Territorial Supreme Court.

ARGUMENT

POINT I

The Circuit Court of Appeals was wrong in overruling the decision of the Supreme Court of Puerto Rico as to the scope of the appeal given to employers by section 9 of the Puerto Rican Workmen's Compensation Act as amended by the Act of 1925.

The decision of the insular Supreme Court was clearly right.

A. Section 9 of the Workmen's Compensation Law of Puerto Rico, as amended by Act No. 102 of September 1, 1925 (Laws of 1925, p. 930; Appendix, *infra*, p. 35) provided:

> "Section 9. Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries * * *. **Likewise the employer may appeal** from any decision of the commission **when such decision is to the effect that the accident is one for which compensation is granted under this act.**" (*Emphasis supplied*)

The third paragraph of section 2 of the same law, likewise as amended by the same Act No. 102 of September 1, 1925, provided (Laws of 1925, pp. 906-908; Appendix, *infra*, p. 33):

> "This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed * * *; *Provided*, That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment * * *, *payable from the government trust fund.*" [Fund created *from contributions of insured employers*, under Sections 27 and 28 of the Law, as amended by the Act of September 1, 1925; Laws of 1925, pp. 944-946; Appendix, *infra*, p. 40].

Sections 7 and 20 of the law, likewise as amended by the same Act No. 102 of September 1, 1925 provided (Laws of 1925, pp. 924-926, 942-944; Appendix, *infra*, pp. 34-35, 39-40):

"Section 7. Every employer subject to the provisions of this Act * * * shall report to the Workmen's Relief Commission * * * all injuries suffered by his employees in the course of their employment.

"Such reports shall be upon printed blanks * * *, and shall contain * * *.

"The Workmen's Relief Commission shall have power to direct investigation of accidents. * * * shall make a thorough investigation of accidents and shall establish the cause or causes thereof, the character, nature, and extent of the injuries sustained, * * * including * * * such other facts and circumstances as in the opinion of the Commission may enable it to pass judgment on the claim for the relief of the injured workmen when the said claim shall be presented to the Commission as herein provided.

"The Workmen's Relief Commission shall have the power to make such further investigations * * *.

"In the case of an accident to a laborer while working for an *employer* who in violation of the law is *uninsured, the Workmen's Relief Commission shall determine proper compensation*, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action in a court of competent jurisdiction, *against said employer* to recover the aforesaid sum; *Provided, however,* That *the Commission shall grant the employer* as well as the laborer in the case *an opportunity to be heard and to defend themselves*, and shall conform, as far as possible to the practices observed by the courts of justice." (*Italics supplied*)

"Section 20. If any accident occurs to any workman employed by *an employer* subject to the provisions of this Act, *who has failed to comply* with said provisions relative to the submission of reports and the payment of premiums on the dates hereinbefore specified, *the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation* to be paid injured

workman plus expenses in the case. * * * " (*Italics supplied*)

B. In the present case, after the deaths of three of the Texas Company's employees, laborers cleaning a platform by the side of a warehouse and wharf, overwhelmed by a landslide (R. 2), the Commission held a hearing in accordance with section 7 of the Act, *supra*, found that the Texas Company "was not an insured employer", determined the proper compensation for each of the three deaths, and directed the Attorney General to collect the respective amounts from the company,—all in accordance with sections 7 and 20 of the Act (Bill of Complaint, Pars. 5, 6; R. 2-3).

The Texas Company, plaintiff-respondent, the employer, did not appeal; but, instead, after waiting until after the expiration of the time for appeal fixed by the statute, undertook to attack the Commission's order collaterally; *first* by *certiorari*, unsuccessfully (Complaint, Par. 7; R. 3); and then, *secondly*, by this injunction suit (*ante*, Statement, pp. 7-8).

C. The Supreme Court of Puerto Rico said in the *certiorari* case, upon the company's appeal, in affirming the judgment of the District Court dismissing those proceedings for want of jurisdiction (*Texas Co.* vs. *Workmen's Relief Commission*, 40 P. R. Rep. 456, 458):

> "Furthermore the appellant does not convince us that an appeal to review the decision complained of did not lie under section 9 of the Act of 1925, laws of that year, page 930. It provides: * * * [*quoting it as above*, *ante*, p. 17].
>
> "A general appeal, it would seem, could raise the incidental question. * * *
>
> "We find nothing in the laws of Porto Rico to authorize the *certiorari* solicited and the judgment will be affirmed." (*Emphasis supplied*)

D. In the present case the Supreme Court of Puerto Rico, after pointing out that this company had already at-

tacked the Commission's order by those *certiorari* proceedings on the ground of supposed nullity, and after quoting with approval what it had said in that case, as above quoted, added (R. 32; 52 P. R. Dec. 658, 666):

> "No other recourse was taken by plaintiff and the order remained standing, no effort being necessary to conclude that after the years passed, plaintiff is not in position to do now by injunction what in due time it could have done by the means placed at its disposal by the law."

E. The effect of these two decisions of the Supreme Court of Puerto Rico was to hold squarely that the employer was entitled to recourse by appeal from the Commission's decision *in any case* where, in the language of section 9 of the Act, *supra*,

> "such decision is to the effect that the accident is one for which compensation is granted under this Act",

regardless of whether the compensation thus "granted" by the Commission *is payable out of the government trust fund* [Sec. 2, "Insured employer"] *or*, as in the present case, where the Commission has "determined" the "proper compensation", and has "charge[d] said employer with the amount of such compensation" under sections 7 and 20 of the *Act to be paid by the employer itself as* "an employer who in violation of the law is *uninsured*".

F. It is submitted that that interpretation of the statute by the insular Supreme Court, as allowing an appeal to the employer in either case, is wholly reasonable, and is entirely in accord with the language of section 9 of the Act.[2]

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[2] Respondent company itself, in its brief as appellant in this case in the Circuit Court of Appeals, did not question this interpretation of the Act by the insular Supreme Court; but, to the contrary, expressly said (*Appellant's*

There is certainly nothing on the face of the language of section 9 *in any way expressly limiting* the employer's right of appeal to the single situation where the compensation adjudged by the Commission is to be paid out of

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Brief, Circuit Court of Appeals, in this case, No. 3380 in that court, pp. 10-11):

> "However, the statute referred to provides that the employer may appeal from a decision of the Workmen's Relief Commission only '*when* such decision is to the effect that the accident is one for which compensation is granted under this Act' (Laws of Puerto Rico, 1925-26, p. 930). **It has never been disputed in this proceeding that the accident is one for which compensation is granted.** * * *
>
> "* * * Furthermore, the only ground upon which 'a general appeal' could be taken, in which to raise the 'incidental question' referred to, was that the accident was not one for which compensation could be granted **and plaintiff has never disputed that this was an accident for which compensation should be granted.**" (*Emphasis supplied*)

Respondent's argument, as appellant in the Circuit Court of Appeals, ran along different lines, not followed by that court, *viz.*, that although the employer was actually entitled to have its appeal, yet that [*for some unexplained reason*] the appeal could not reach the "sole question at issue" of "whether the Workmen's Relief Commission could legally direct that the award should be paid *by the employer,* rather than out of the State Fund" [*Appellant's Brief; C. C. A., No. 3380, "Point II"*, p. 10; *italics those of respondent, appellant there*].

Neither the Circuit Court of Appeals nor the insular Supreme Court agreed with respondent in that position.

The idea that no appeal lay at all for the "uninsured" employer (R. 62-64), *apparently originated with the Circuit Court of Appeals itself.*

A certified copy is presented herewith of respondent's brief as appellant in the Circuit Court of Appeals [No. 3380 there]. Attention is particularly invited to its "Point II" (pp. 10-12).

the government trust fund, *or in any way expressly excluding the other situation* where the compensation assessed is to be paid by the employer himself because of being "uninsured"; and no reason is suggested in the Circuit Court of Appeals' opinion why the Legislature should have intended to limit the employer's right of appeal to the one situation, and to exclude the appeal in the other situation.

To the contrary it seems more reasonable to believe that if the Legislature had intended to draw any distinction at all between the two situations, it would rather have preserved the right of appeal in the latter situation where the award assessed by the Commission is payable by the employer himself, because that is the only situation, where, financially, the employer is directly interested in the fact of the award, or in its amount; since, in the first situation where the award is payable out of the government trust fund, the employer is not directly affected. It does not come out of his pocket. And yet the ruling of the Circuit Court of Appeals (R. 62-64, *supra*) is that the Legislature intended to deny him the appeal in the only case where he is financially interested, and to grant it to him only where he is not directly financially interested at all.

G. On the face of it, it would seem to require very positive language on the Legislature's part in order to support such a one-sided interpretation of the statute. It seems unreasonable on its face. It is submitted that the insular Supreme Court's contrary interpretation construing section 9 as broadly granting the right of appeal to the employer in either situation,—and thus preserving to him the right of appeal in the only situation in which he is really directly financially interested, — viz., where the award would have to be paid out of his own pocket, the very situation in which the Circuit Court of Appeals would deny it to him,—is the only reasonable interpreta-

tion of the statute, and should have been sustained. The Circuit Court of Appeals was wrong in overruling it.

POINT II

The decision of the Circuit Court of Appeals overruling the Insular Supreme Court's interpretation of this local insular statute is in conflict with the applicable decisions of this court as to the respect to be paid to the decision of a Territorial court of last resort interpreting a local Territorial statute.

The rule has been established for three quarters of a century. This court applied it with reference to decisions of the Territorial supreme courts of the Territories within the continental United States, long before there were any off-shore Territories, [*Sweeney* vs. *Lomme*, 22 Wall. 208,] and has consistently applied it during the last forty years with reference to decisions of the Supreme Courts of Hawaii, the Philippine Islands, and Puerto Rico.

With reference to the Supreme Court of Puerto Rico, the rule has very recently been re-stated in this court's opinion in the case of *Rafael Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, decided March 27, 1939 [No. 498 at the present Term of this court] where, in reversing the Circuit Court of Appeals, First Circuit, and reinstating the decision of the Supreme Court of Puerto Rico which the Circuit Court of Appeals had reversed in that case, this court said [at pp. 3-4 of the Opinion; 306 U.S.; 83 L. Ed. 607; 609-10, *Advance* Sheets]:

> "And this Court has declared its unwillingness to overrule Porto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute and to sustain such a construction in the absence of clear or manifest error.
>
> "Taxing acts of Puerto Rico are 'purely local'' [*as is likewise the Workmen's Compensation Act*

here involved] "and the traditional reluctance of this Court to overturn constructions of such local statutes by local courts is particularly applicable to interpretations of Puerto Rican statutes by Puerto Rican tribunals. Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.'"

And the earlier decisions there cited and relied upon by this court are substantially to the same effect. *Nadal* v. *May*, 233 U. S. 447, 454; *Sante Fe Ry.* v. *Friday*, 232 U. S. 694, 700; *Phoenix Ry. Co.* v. *Landis*, 231 U. S. 578, 579; *Villanueva* v. *Villanueva*, 239 U. S. 293, 299; *Waialua Co.* v. *Christian*, 305 U. S. 91, 109; *Inter-Island Co.* v. *Hawaii*, 305 U. S. 306, 311; *Diaz* v. *Gonzalez*, 261 U. S. 102, 105, 106; *Cordova* v. *Folgueras*, 227 U. S. 375, 378, 379.

Under this rule the Circuit Court of Appeals should have deferred to the insular Supreme Court's interpretation of this local statute.

As we have said (Petition, "Reasons for Granting the Writ", *ante*, p. 5), this rule embodies an important principle of federal law with relation to the administration of the Territories. It should not be disregarded nor minimized by the Circuit Court of Appeals.

POINT III

The Texas Company, plaintiff-respondent, had a plain, adequate and complete remedy at law by appeal from the order of the Workmen's Relief Commission of April 24, 1928; and, therefore, cannot now maintain this collateral attack upon the order by this injunction suit.

A.—That was the decision of the insular Supreme Court (R. 32) quoted above (*ante*, p. 20).

B.—It is the result that necessarily follows from the

holding of the insular Supreme Court that section 9 of the local Act extended the right of appeal to this "uninsured" employer; which, as we have said above (*ante*, pp. 17-24, Points I and II), should not have been disturbed by the Circuit Court of Appeals.

POINT IV

There was no possible lack of jurisdiction in the findings or orders of the Workmen's Relief Commission. No possible question of "nullity" is here involved.

A: *If the Commission's findings were incorrect or mistaken in any way, then it was at the most simply a case of error;*—of erroneous decision of a matter which the Commission was called upon to decide, within the scope of its statutory powers.

It was not in any way a case of stepping outside of its statutory powers, or of attempting to decide a matter that it was not called upon to decide, or which lay beyond the range of its powers and duties.

Therefore, no question of lack of jurisdiction,—or of "nullity",—is here involved, upon which to sustain this collateral attack, by this injunction suit, upon the Commission's findings and orders.

B: Manifestly the Commission was called upon to investigate, and to hold public hearings, and to find and to decide "the cause" of the accident, the "character, nature and extent of the injuries sustained", and whether or not the accident occurred "to a laborer while working for an employer who in violation of the law is uninsured", and in that case to "determine proper compensation" and report it to the Attorney General for institution of proper action "against said employer to recover the aforesaid sum". All of that was the Commission's express statutory duty under Section 7 of the Act, as amended September 1, 1925 (Laws of Puerto Rico, 1925, pp. 924-926; Appendix *infra*, pp. 34-35). And the Com-

mission was further expressly "authorized to charge said employer with the amount of such compensation to be paid injured workmen plus expenses in the case", by Section 20 of the same Act as amended the same date, September 1, 1925 (Laws of 1925, pp. 942-944; *Appendix infra,* pp. 39-40). Plaintiff's allegations show (*Bill of Complaint,* Par. 5; R. 2-3) that the Commission proceeded to do its duty under these statutory provisions, and that it "investigated said accident and after holding public hearings in the three cases" handed down its findings and its orders.

C. No criticism is made of the Commission's procedure. It is not even suggested that it was doing anything outside of its statutory duty; the only criticism is that the plaintiff thinks that its conclusion was wrong.

D. That is simply to claim that it committed *simple error* in its findings upon the evidence before it. But error does not affect jurisdiction. To say that an order or judgment is erroneous does not mean that it is void, or that it may be disregarded as a nullity upon collateral attack.

E. Plainly, if this injunction suit had been brought during those hearings before the Commission, and prior to the time when the Commission arrived at its conclusions, and an attempt had thus been made to halt the Commission's proceedings by such a collateral attack before it had arrived at its decision, on the ground that it had no jurisdiction or that its proceedings were a "nullity", the suit would have been laughed out of court. No pretense could have been made that the Commission did not have the power, or that it was not its statutory duty, to proceed to hear the evidence and to determine the questions involved, including the question of fact,—(or of mixed law and fact),—as to whether or not the Texas Company, the employer of these laborers who were killed, was or was not (*at least in relation to them*) an "unin-

sured employer". That was a part of the Commission's duty.

F. Then, how can the fact that the Commission actually decided this question,—which it was a part of its duty to decide,—one way, rather than the other way, be said to affect its jurisdiction in any way? How can it affect the Commission's *jurisdiction* that its decision was that the plaintiff actually was an *uninsured employer*; rather than that it was an insured employer; as to these workmen?

G. It is plain that it cannot affect it in any way; that it is not a question of jurisdiction that is here involved. It is, at the most, only a question of *alleged error* on the Commission's part in arriving at its decision on a matter within its jurisdiction, and which it was its express statutory duty to decide.

If the employer thought the decision wrong, it should have challenged it by appeal [Points I, II and III, *ante*, pp. 17-25].

POINT V

Since the Commission's decision was upon a question within its jurisdiction, it may not be assailed by collateral attack, such as this injunction suit.

A. The usual rule is applicable here, which applies to collateral attacks upon the decisions of all statutory or administrative tribunals or inferior courts of limited jurisdiction, viz., that while their jurisdiction will not be presumed, but must affirmatively appear; yet, within the scope of their jurisdiction, their judgments are as final and binding as those of any superior court or other tribunal, and are just as unassailable upon collateral attack. Compare, for example, the court martial: *Ex Parte Reed*, 100 U. S. 13, 23. The rule is the same as that applicable to justices of the peace. It needs no citation of authority.

B. It follows, therefore, that the findings and order of the Commission in this case, unassailed by direct appeal, became *res adjudicata* when the statutory period for appeal had elapsed; and thereafter were not subject to collateral attack; and, hence, are not subject to collateral attack by this injunction suit.

C. This plaintiff-respondent did not appeal from the Commission's order. No appeal was taken.

POINT VI

The Treasurer's procedure to enforce payment by the Texas Company in accordance with the order of the Workmen's Relief Commission and the supplemental order of its successor, the present Industrial Commission, by attachment, is in accordance with the provisions of the local statutes, and is correct.

A. That was the decision of the insular Supreme Court, interpreting the local statutes involved, after carefully reviewing them (*Opinion*, R. 32-34), to which it adhered upon reargument (*Opinion*, R. 49-53). Both of those opinions were unanimous. [Except that MR. JUSTICE CORDOVA DAVILA, who was seriously ill, took no part in either of them.]

B. Both of these opinions appear to be clear and convincing. Like the interpretation given by that Court to the provision concerning appeals, in section 9 of the statute, *supra*, they are within the rule that a local Territorial Supreme Court's interpretation of local Territorial statutes will not be disturbed, unless "clearly erroneous". The insular Supreme Court's interpretation of the local statutes here involved, which it analyzes in these opinions, and which it concludes uphold the power of the Treasurer to proceed by attachment in this case, is certainly not "clearly erroneous". On the contrary, like its interpretation of section 9 of the Act, *supra*, its interpretation here also appears to be reasonable and right. It should not have been disturbed by the Circuit Court of Appeals.

C. That part of the opinion (R. 64-68) of the Circuit Court of Appeals overruling this part of the opinion of the Territorial Supreme Court of Puerto Rico is bottomed chiefly upon the primary decision of the Circuit Court of Appeals (R. 62-64) above discussed in Points I and II (*ante*, pp. 17-24) overruling the decision of the insular Supreme Court as to the employer's right of appeal from the Commission's order in this case and holding, contrary to the Territorial Supreme Court's decision, that the Texas Company here, as an "uninsured" employer, had no such right of appeal.

Bottomed upon that primary [*erroneous*] holding, the Circuit Court of Appeals then further holds that the Texas Company had, therefore, no plain, adequate or complete remedy at law against the Commission's order; and accordingly that, unless this collateral attack by injunction suit were sustained, the Texas Company would never have had any fair opportunity to present its defenses of its claims of erroneous action on the part of the Commission, and would thus be deprived of all substantial remedy and of any opportunity of any kind for a judicial adjudication of its case, and that thus "fraud" would, in effect, be practiced upon it.

The Circuit Court of Appeals says (R. 64):

> "We therefore conclude that the Supreme Court" [of Puerto Rico], "if it intended to rule that the plaintiff had a remedy by appeal under Section 9 and that the remedy thus afforded was as complete and adequate as the one sought by the bill (which it did not hold unless by inference), it was clearly wrong in so holding. * * * Under these circumstances, if the plaintiff's bill is not retained and the Treasurer restrained from collecting the orders by distraint the plaintiff will be deprived of its remedy by defense and fraud will be practiced upon it. This equity will not permit."

D. But, as above pointed out, *that is all bottomed upon the Circuit Court of Appeals' primary erroneous action* in overruling the local Supreme Court's interpretation of section 9 of the local Act as actually extending the right of appeal to this "uninsured" employer (Points I and II, *ante*, pp. 17-24). **The Texas Company really did have the right of appeal, and made no attempt to avail itself of it.** Hence, as the insular Supreme Court said, as above quoted (R. 32; *ante*, p. 20),

> "plaintiff is not in position to do now by injunction what in due time it could have done by the means placed at its disposal by the law."

E. Here again the rule applies of the respect to be accorded to a decision of the local Territorial Supreme Court interpreting local Territorial statutes (Point II, *ante*, pp. 23-24).

This part of the insular Supreme Court's decision consists likewise of interpretation of various local Territorial statutes, and of the discussion and application of local judicial and administrative procedure. It is matter manifestly peculiarly within the scope of the rule. It should not have been disturbed by the Circuit Court of Appeals.

CONCLUSION

The judgment of the Supreme Court of Puerto Rico affirming that of the District Court of San Juan dismissing the plaintiff-respondent's bill of complaint was right, and should have been affirmed by the Circuit Court of Appeals. It rested upon the Territorial Supreme Court's interpretation of various local statutes, primarily upon its interpretation of section 9 of the local Workmen's Compensation Act as to the scope of the right of appeal granted to the "employer".

The Territorial Supreme Court's interpretation was

right and reasonable in itself; and the decision of the Circuit Court of Appeals reversing it is in conflict with the applicable decisions of this court as to the deference to be accorded to such decisions of Territorial supreme courts interpreting local Territorial statutes.

The judgment of the Circuit Court of Appeals should be reversed, and that of the Supreme Court of Puerto Rico affirmed.

Respectfully submitted.

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APPENDIX

APPENDIX

Pertinent sections of the Workmen's Compensation Law of Puerto Rico, as amended by Act No. 102, approved September 1, 1925 [Laws of Puerto Rico, 1925, pp. 904, *et seq.*].

"EMPLOYMENTS COVERED"

"Section 2.—That the provisions of the Act shall apply to laborers injured or disabled or who lose their lives from accidents occurring because of any act or function inherent in their work or employment and while engaged therein and as a consequence thereof, or from occupational diseases or death due to such occupation, as hereinafter specified; *Provided,* That the provisions of this Act shall be applicable to members of municipal fire corps, for which purpose each municipality shall include salaried firemen in its report on employees, made as an employer.

"Domestic servants and employees engaged in clerical work, in offices of any kind and commercial establishments where machinery is not used, are excepted.

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided,* That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, payable from the government trust fund.

"The sums so paid need not to be reimbursed to The People of Puerto Rico out of the fund created by this Act.

"The Commissioner of the Interior is hereby authorized

to make advances on account of their compensation, to workmen injured on public works, which advances shall be reimbursed to said official, if justified, out of the compensation to workmen injured on public works. (*Laws of 1925, pp. 906-908*).

"Section 7.—Every employer subject to the provisions of this Act, or the person representing him in business, shall report to the Workmen's Relief Commission as soon as possible, within a period of five days from the date of the accident, all injuries suffered by his employees in the course of their employment.

"Such reports shall be upon printed blanks furnished upon request by the commission, and shall contain the name and nature of the business of the employer, the location of the establishment or place of business, the name, age, sex and occupation of each injured employee, and shall state the date and hour of the accident, the nature and cause of the injuries sustained and such other information as the Workmen's Relief Commission may deem pertinent to request.

"The report made by the employer under the provisions of this section shall not be evidence against the employer in any proceeding under this or any other act.

"The refusal or neglect of any employer or his agent to make the report required by this section, shall constitute a misdemeanor and shall be punishable by a fine of not less than twenty-five (25) nor more than fifty (50) dollars for each offense.

"The Workmen's Relief Commission shall have power to direct the investigation of accidents by such investigators or agents as shall have been or shall hereafter be appointed by it for such purposes. The said investigators or agents shall make a thorough investigation of accidents and shall establish the cause or causes thereof, the character, nature and extent of the injuries sustained, and shall file a full report of the said facts with the Commission, including in the said report such other facts and

circumstances as in the opinion of the Commission may enable it to pass judgment on the claim for the relief of the injured workman when the said claim shall be presented to the commission as herein provided.

"The Workmen's Relief Commission shall have the power to make such further investigations as it may deem necessary for the purposes of this Act.

"The Workmen's Relief Commission or any of its members, and its investigators or agents, are hereby expressly authorized to subpoena witnesses, under warning of punishment for contempt, to take oaths and declarations, to examine books and documentary evidence material to the case under investigation, and to visit and inspect the buildings, machinery and other property where any accident to a workman may have occurred.

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum; Provided, however, That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice." (*Laws of 1925, pp. 924-926*).

"Section 9.—Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act.

"Said appeals shall be taken by filing in the office of the secretary of the district court, within thirty days after

service of notice of the decision of the commission, a written statement of the ground for the claim and a statement of the facts on which the appeal is based. * * *" (*Laws of 1925, p. 930*).

"DUTIES OF EMPLOYERS"

Section 13.—It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in sections 11 and 12 of this Act shall be computed; Provided, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference.

"Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property of the employer as soon as the same shall be left unpaid upon service of notice to pay.

"If the employer fails to file such statement on or

before the date above-specified, the commission shall grant him twenty days more in which to do so; Provided, That if upon the expiration of said period the employer fails to file said statement, he shall be guilty of misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars, in the discretion of the court.

"The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission, accompanied by the amount of the assessment corresponding to the percentage of wages declared in said statement in accordance with the rates fixed by the Commission; Provided, That this shall in no way affect the right of the laborer to the corresponding compensation.

"It shall be the duty of every employer entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to, every one of the said laborers; Provided, That if any employer fails to comply with this requisite, he shall be guilty of misdemeanor punishable by a fine not to exceed fifty (50) dollars.

"The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

"Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the differ-

ence between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act." (*Laws of 1925, pp. 938-942*).

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[3] Section 13 of the Act, as amended in 1921 by Act No. 61, approved July 14, 1921 (Laws of Puerto Rico, 1921, 472, 490-492), and as it stood on July 15, 1925, the date when, as the plaintiff-respondent's bill of complaint alleges [Par. 3; R. 2], the Company filed its "Statement in Duplicate" under the Act [*six weeks before the amendment* of September 1, 1925, Act No. 102, *supra, took effect under its emergency clause*], read as follows:

> Section 13.—It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in Sections 11 and 12 of this Act shall be computed; *Provided*, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference. Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property of the employer just as soon as the same shall be left unpaid

"Section 20.—If any accident occurs to any workman employed by an employer subject to the provisions of this Act, who has failed to comply with said provisions relative to the submission of reports and the payment of

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upon service of notice to pay. The insurance of every employer shall become effective on the date on which his payroll or statement is filed in duplicate in the office of the commission; and *Provided*, That this shall in no way affect the right of the injured laborer to the corresponding compensation.

The failure to file such statement on or before the date above specified shall constitute a misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars, in the discretion of the court. Blanks for such statements shall be furnished upon request by the Workmen's Relief Commission.

It shall be the duty of every employer of laborers entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to everyone of the said laborers.

The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the difference between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act.

premiums on the dates hereinbefore specified, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation to be paid injured workman plus expenses in the case. The commission shall report to the Attorney General the total amount of said compensation, plus the expenses in the case, in order that he, by proper action in a court of competent jurisdiction, may obtain payment of said sum." * * * (*Laws of 1925, pp. 942-944*).

"Creation of a Trust Fund"

"Section 27.—That the amounts existing in the Workmen's Relief Trust Fund created by section 1 of an act entitled 'An Act providing for the relief of such workmen as may be injured, or of the dependent families of those who may lose their lives while engaged in trades or occupations and for other purposes', approved April 13, 1916, are hereby reappropriated to carry out the provisions of this Act and shall constitute the Workmen's Relief Trust Fund hereby created together with such other sums as are hereinafter specified. *Laws of 1925, p. 944.*

"Section 28.—That all employers employing workmen subject to the terms of this Act, shall be bound to contribute to the 'Workmen's Relief Trust Fund' in the form and manner provided herein; *Provided*, That any employer may file with any district court an application for a writ of *certiorari* in order that said court may review any decision of the commission on the levying of assessments, provided said application is made within thirty (30) days after the date of the service of notice of the levying of such assessment; *And provided, further*, That the legality of any premium fixed by the commission may be reviewed by means of *certiorari* proceedings in same manner and form hereinbefore specified, provided the application is made within the same term of thirty (30) days above established." *Laws of 1925, pp. 944-946.*

"DEFINITIONS"

"Section 30.—For the purposes of this Act 'laborer' or 'employee' shall be understood to be any person at the service of any individual, partnership or corporation regularly employing one or more persons under any express or implied service contract, whether verbal or written, and whether such person is man, woman or child; *Provided*, That such laborers or employees working for employers not included in the insurance established in this Act, and those whose labor is of a merely accidental character are expressly excluded.

"The word 'laborer' or 'employee' includes all workmen employed in any manufacturing or agricultural establishment or occupation by any natural or artificial person, for compensation; and by the Insular Government or any of its dependencies, according to the purposes of this Act. (*Laws of 1925, p. 946*).

Section 5.—This Act, being of an urgent nature, shall take effect immediately after its approval. (*Laws of 1925, p. 946*).

Act No. 85, approved May 14, 1928; Laws of 1928, pp. 630-690.

Section 25.—In case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Industrial Commission shall determine proper compensation, plus expenses incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property; * * * (*Laws of Puerto Rico, 1928, p. 662*).

Section 48.—The provisions of this Act shall in no way affect pending litigation relative to workmen's compensation under previous laws. (*Laws of Puerto Rico, 1928, p. 690*).

Section 57.—All laws or parts of laws in conflict herewith are hereby repealed. (*Laws of Puerto Rico, 1928, p. 690*).

Act No. 45, approved April 18, 1935; Laws of 1935, pp. 250-330.

Section 15.—In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; *Provided, further*, That the Commission shall grant the employer as well as the workman or employee in the case an opportunity to be heard and to defend themselves, conforming as far as possible to the practice observed in the district courts; *And provided, also*, That after the parties have been summoned by such means as the Commission may adopt, should they, or either of them, fail to appear for hearing and defense, it shall be understood that such party or parties waive their rights, and the Commission may decide the case in default, without further delay. • • • (*Laws of 1935, p. 292*).

Section 34.—The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force

on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws. (*Laws of 1935, pp. 318-320*).

Section 51.—Act No. 85, approved May 14, 1928, as subsequently amended, is hereby expressly repealed, with the exception of the provisions in Sections 40 and 47, both inclusive, of this Act, in regard to the decision and liquidation of cases pending under said Act (*Laws of 1935, p. 330*).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, Treasurer,
Petitioner,

vs.

THE TEXAS COMPANY (P. R.) INC.,
Respondent.

**REPLY BRIEF FOR PETITIONER,
IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION**

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SUBJECT-INDEX

TABLE OF CASES

STATUTES

OTHER AUTHORITIES

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**REPLY BRIEF FOR PETITIONER,
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I.

Respondent's brief in opposition is substantially a plea of confession and avoidance. Respondent does not even attempt to deny that the Circuit Court of Appeals erred, as pointed out in our Petition, in overruling the local Territorial Supreme Court of Puerto Rico's construction of the local Territorial statute (Sec. 9 of the Act as amended in 1925) as according the employer the benefit of an unrestricted appeal from the order of the Workmen's Relief Commission [from which, as the insular Supreme Court held, it necessarily followed that, this Respondent not having availed itself of its right of appeal, the determination of its liability by the Commission had become *res adjudicata*, and not subject to collateral attack, either by the Respondent company's former certiorari proceedings (which the insular District Court,

affirmed by the Supreme Court, had dismissed for want of jurisdiction), or by the present injunction suit].

As we have said, Respondent's brief in opposition does not even attempt to assail the correctness of our position here. By its silence, it admits this primary error of the Circuit Court of Appeals.

II.

Respondent suggests, however, that (*Brief*, "I", pp. 4-5): "No question is raised which would warrant granting certiorari".

Respondent's suggestions are: (1) That the decision of the Circuit Court of Appeals did not rest solely upon its overruling of the insular Supreme Court's interpretation of Section 9; and (2) That the interpretation of Section 9 is in any event not "an important question of local law", but "involved a minor procedural point only".

THE ANSWER TO THESE SUGGESTIONS IS PLAIN:

A. *The importance of the question here presented does not lie primarily in the character or importance of the particular local statute involved;* but, on the contrary, as pointed out in our Petition ("Reasons for Granting the Writ", pp. 4-5), **in the importance of the maintenance of the rule** established by a long line of decisions of this court, and here disregarded by this decision of the Circuit Court of Appeals, **"as to the respect to be paid to such decisions of local Territorial courts interpreting local statutes"**. As we there said (*Petition*, p. 5):

> "That rule embodies an important principle of federal law with relation to the administration of the Territories. It is of public importance that its spirit be not disregarded, nor minimized, as is done by this decision of the Circuit Court of Appeals."

This is of great importance, particularly to the government and people of Puerto Rico, as well as to those of the other Territories.

B. *Respondent is not correct in saying* (*Brief*, p. 5, "(4)") that the Circuit Court of Appeals' erroneous interpretation of Section 9, in overruling the local Supreme Court's interpretation of it, *"involved a minor procedural point only"*. To the exact contrary, it is the very thing that is determinative of the substantial rights of the parties here, and in the companion cases; and is the thing that is expressive of the local Supreme Court's interpretation of THE POLICY OF THE LEGISLATURE to provide a method of speedy determination of claims in workmen's compensation cases of this character.

The legislative power to do this, and to invest the Commission with authority to make findings of fact and determinations of liability, and to make such determinations final and binding between the parties, in the absence of appeal to the courts by either party in accordance with the reasonable mode prescribed by the statute, has been sustained in many decisions relating to workmen's compensation acts and other classes of more or less kindred statutes, both by the State courts and by this Court. The public policy is plain, as well as the value to the community of the speedy determination of such claims.

C. No question is raised by Respondent here but that the thirty days allowed by this statute for appeal from the Commission's decision to the District Court (Sec. 9; Appendix to our Petition, pp. 35-36) afforded ample and sufficient remedy to the employer company. No reason is even suggested for this Respondent's failure to avail itself of the remedy thus afforded by the statute.

D. The insular Supreme Court's decision that (R. 32; 52 P. R. Dec. 658, 666; *quoted in our original Supporting Brief here*, p. 20):

> "No other recourse was taken by plaintiff, and the order remained standing, no effort being necessary to conclude that after the years passed, *plaintiff is not in position to do now by injunction what in due*

time it could have done by the means placed at its disposal by the law", (Italics supplied)

is directly in line with the decision of this Court in *Newport News Co.* vs. *Schauffler*, 303 U. S. 54, 56-57, 58, arising under the National Labor Relations Act, where a similar question was involved of the exclusiveness of the remedy, given by that statute, of appeal to the Circuit Court of Appeals from decisions of the National Labor Relations Board. This Court stated the case as follows (303 U. S. at pp. 56-57):

> "The case was heard by the District Court upon the plaintiff's application for a temporary injunction and the defendants' motion that the bill be dismissed on the ground, among others, that *the Company had failed to exhaust its administrative remedies and that granting the relief prayed for would be an usurpation of the authority vested by the Act in the Court of Appeals.* The court denied the temporary injunction and dismissed the bill on the ground that the Company had 'a plain, adequate and exclusive remedy under the terms of the Act itself, and that no irreparable damage is threatened, and that this [the District] Court has no jurisdiction of the controversy presented by the bill.' That decree was affirmed by the Court of Appeals for the Fourth Circuit, which held that the Company *'has an adequate remedy under the statute* and may not apply for relief in equity until it has exhausted the administrative remedy there provided.' 91 F. (2d) 730." (*Italics supplied*)

This Court affirmed the decree and judgment of the lower courts, following its own prior decision the same day in *Myers* vs. *Bethlehem Corporation*, 303 U. S. 41, 48-52, and adding (303 U. S. 54, *supra*, at pp. 57-58):

> "The Act does not purport to leave the determination wholly to the Board. It confers upon the Board exclusive initial power to make the investigation, but

provides for judicial review by the Circuit Court of Appeals."

And in the *Myers* case, arising under the same statute, this Court said (303 U. S. 41, *supra*, at p. 50):

> "Since the procedure before the Board is appropriate and the judicial review so provided is adequate, Congress had power to vest exclusive jurisdiction in the Board and the Circuit Court of Appeals. *Aniston Manufacturing Co.* vs. *Davis*, 301 U. S. 337, 343-346."

E. It cannot be questioned that the Legislature of Puerto Rico possessed like legislative power to vest exclusive jurisdiction in the Workmen's Relief Commission, with an appeal provided to the District Court, by the Act here in question. The Legislature has been invested by the Congress, by Sections 25 and 37 of the Organic Act (Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*) with "all local legislative powers" to "extend to all matters of a legislative character not locally inapplicable", with express "authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or re-arrange the courts and their jurisdiction and procedure" (Section 40). Under that grant, "as broad and comprehensive as language could make it", "legislative powers were conferred, nearly, if not quite, as extensive as those exercised by the state legislatures." (*Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, 260-262).

F. *It is well-settled that the decision of such an administrative agency as the Commission,* under this statute, with appeal provided by the statute to the District Court, constituted "due process of law", and—[after due hearing, as Respondent has expressly alleged was had in this case (*Bill of Complaint*, Par. 5, R. 2-3), and in the absence of any claim of any kind of irregularity in the proceedings, and after the expiration of the statutory time al-

lowed for the appeal, without any appeal having been taken],—*became as final and conclusive between the parties as the judgment of any court*, and as unassailable upon collateral attack. *Anniston Mfg. Co.* vs. *Davis*, *supra*, 301 U. S. 337, 345-357; *Myers* vs. *Bethlehem Corporation*, *supra*, 303 U. S. 41, 48-51; *St. Joseph Stock Yards Co.* vs. *United States*, 298 U. S. 38, 50-51; *Shields* vs. *Utah Idaho R. Co.*, 305 U. S. 177, 180, 182, 184-185; *Voehl* vs. *Indemnity Ins. Co.*, 288 U. S. 162, 166-167; *Crowell* vs. *Benson*, 285 U. S. 22, 46-48, 50-51 (*and see also the dissenting opinion of* JUSTICES BRANDEIS, STONE *and* ROBERTS, at pp. 68 *et seq.*, and the State decisions there collected in footnote 4,—concurring in this respect with the majority opinion of the Court). This Court there said (*Opinion of the Court*, 285 U. S. at pp. 46-47):

> "Apart from cases involving constitutional rights to be appropriately enforced by proceedings in court, there can be no doubt that the Act contemplates that, as to questions of fact arising with respect to injuries to employees within the purview of the Act, the findings of the deputy commissioner, supported by the evidence and within the scope of his authority, shall be final. *To hold otherwise would be to defeat the obvious purpose of the legislation* to furnish a prompt, continuous, expert and inexpensive method of dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task. That object is to secure within the prescribed limits of the employer's liability an immediate investigation and a sound practical judgment, and *the efficacy of the plan depends upon the finality of the determinations* of fact with respect to the circumstances, nature, extent and consequences of the employee's injuries and the amount of compensation that should be awarded. (*Italics supplied*)

And in *Voehl* vs. *Indemnity Ins. Co.*, *supra*, 288 U. S. 162, 166, this court said:

> "The proceedings of the deputy commissioner conformed to the statute. The precise issue, whether the

injury arose out of and in the course of the employment, turned on the general nature and scope of the employee's duties, the particular instructions he had received and the practice which obtained as to work in extra hours or on Sundays, and the purpose of the journey in which he was injured. We think that there can be no doubt of the power of the Congress to invest the deputy commissioner, as it has invested him, with authority to determine these questions after proper hearing and upon sufficient evidence. *And when the deputy commissioner, following the course prescribed by the statute, makes such a determination, his findings of fact supported by evidence must be deemed to be conclusive. Crowell* v. *Benson*, 285 U. S. 22, 46, 47; *L'Hote* v. *Crowell*, 286 U. S. 528." (*Italics supplied*)

III.

Respondent incorrectly says (*Brief*, p. 7) that:

"There can be no question as to the correctness of the decision of the Circuit Court of Appeals in holding that there was jurisdiction in equity to review the orders of the Workmen's Relief Commission since it is not disputed that the only way in which the awards could have been collected at the time they were handed down was by suit by the Attorney General in which suit respondent could have raised the defense that it was insured",

(citing the last paragraph of Section 7 of the Act as amended in 1925, Laws of Puerto Rico, 1925, p. 926, quoted, Appendix to our Petition, p. 35). That paragraph of Section 7 provides:

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said em-

ployer to recover the aforesaid sum." (*Emphasis supplied*)

A. *Respondent's erroneous statement here* plainly echoes the similar erroneous assumption in the opinion of the Circuit Court of Appeals, where, in connection with its erroneous conclusion, incorrectly overruling the Territorial Supreme Court's interpretation of Section 9 of the Act, and incorrectly holding [*what the Respondent does not now even attempt to defend*] that the Respondent "had no right of appeal under Section 9 from the orders of April 24, 1928, to review the question whether or not it was an uninsured employer", the Court of Appeals, quoting the above provision in the last paragraph of Section 7, said, *in an apparent attempt to bolster up its construction of Section 9* (R. 63-64):

> "It is also apparent that there was no occasion for giving one declared by the Workmen's Relief Commission to be an uninsured employer an appeal under Section 9 to contest that question, for the last paragraph of Section 7 of the act provides: [quoting it as above]
>
> *"In this way the Legislature provided a remedy by which the employer,* the plaintiff here, *could plead in defense* of the action *that he was not an uninsured employer* and have the question whether he was or not determined by a court of competent jurisdiction." (*Italics supplied*)

B. It is noteworthy that *the Court of Appeals cites no authority in support of its conclusion* that in an action brought by the Attorney General, to collect it, after certification to him of the Commission's determination of "proper compensation" under Section 7 [*and under Section 20,* Laws of 1925, pp. 942-944, *Appendix to our Petition,* pp. 39-40, *authorizing the Commission "to charge" an employer "who has failed to comply with said provisions relative to the submission of reports and the payment of premiums on the dates hereinbefore specified", "with the amount of such compensation", "plus expense"*], the defendant employer then

> "could plead in defense of the action that he was not an uninsured employer, and have the question whether he was or not determined by a court of competent jurisdiction.."

C. *Neither does the Respondent here cite any authority to sustain that proposition.* Respondent contents itself with what must be regarded as the rather astonishing statement that (*Brief*, p. 7) "it is not disputed".

D. Not only is it certainly disputed; but it is plainly erroneous. No authority anywhere has been found to support it.

(1) There is, of course, no such express provision in the quoted paragraph of Section 7. **(2) The proposition appears to be directly in the teeth of the established rule that a proceeding to enforce a judgment** [*including a final determination of an administrative or quasi-judicial body, which has acquired the finality of a judgment*] **is collateral to the judgment; and that, therefore, no inquiry into the regularity or the validity of the judgment can be permitted in such a proceeding, any more than in any other form of collateral attack.** (3) The proposition is directly opposed to the holding of the insular Supreme Court; which, as already pointed out (*ante*, pp. 3-4), and as quoted in our original Brief in Support of our Petition here (p. 20), said (R. 32) that

> "plaintiff is not in position to do now by injunction what in due time it could have done by the means placed at its disposal by the law",

on the express ground that Respondent [plaintiff], having failed to appeal within the thirty days' time limited by the statute, was barred from making collateral attacks upon the Commission's order which had thus acquired the finality of a judgment.

E. **The established rule,** which may be said to have the authority of an axiom of the law, is stated as follows in the "Cyclopedia of Law and Procedure" (23 Cyc., pp. 1064-1065), in the article on "Judgments":

"2. *Proceedings to Enforce Judgment.* A proceeding to enforce a judgment is collateral to the judgment, and therefore no inquiry into its regularity or validity can be permitted in such a proceeding, whether it be a direct action on the judgment or on a note given in satisfaction of the judgment, or a proceeding to revive the judgment, or proceedings supplementary to execution, or bill in equity in aid of execution or a proceeding by mandamus to compel the levy and collection of a tax to provide funds for the payment of a judgment, the debtor being a municipal corporation."

Among the authorities cited in the footnotes in support of the text are [Note 76] the decisions of this court in *United States ex rel Harshman* vs. *Knox County Court,* 122 U. S. 306, 317-320; *United States* vs. *New Orleans,* 98 U. S. 381; *Mayor etc. of City of Davenport* vs. *United States,* 9 Wall. 409; *Supervisors of Rock Island County* vs. *United States,* 4 Wall. 435; and a number of decisions in the lower federal courts.

F. And directly in line with this established general rule is the decision of this court in *Shields* v. *Utah Idaho R. Co.,* 305 U. S. 177, 180, 182, 184-185, which appears to be conclusive on this question. This court there said (at pp. 184-185):

"*What is the scope of the judicial review to which respondent is entitled?* As Congress had constitutional authority to enact the requirements of the Railway Labor Act looking to the settlement of industrial disputes between carriers engaged in interstate commerce and their employees, and could include or except interurban carriers as it saw fit, no constitutional question is presented calling for the application of our decisions with respect to a trial *de novo* so far as the character of the respondent is concerned. With respect to that question, unlike the case presented in *United States* v. *Idaho,* 298 U. S. 105, where the Interstate Commerce Commission was denied the authority to determine the character of the trackage in question (*Id.,* p. 107), *the Commission in this instance was expressly directed to make the*

determination. As this authority was validly conferred upon the Commission, the question on judicial review would be simply whether the Commission had acted within its authority. Interstate Commerce Comm'n v. *Union Pacific R. Co.*, 222 U. S. 541, 547; *Interstate Commerce Comm'n* vs. *Louisville & Nashville R. Co.*, 227 U. S. 88, 91; *Virginian Railway Co.* v. *United States*, 272 U. S. 658, 663; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 444; *Florida* v. *United States*, 292 U. S. 1, 12; *St. Joseph Stock Yards Co.* v. *United States, supra.*" [298 U. S. 38, 51] (*Italics supplied*)

In the present case no question is made as to the regularity of the Commission's proceedings. To the contrary, Respondent's bill of complaint expressly shows the regularity of the Commission's investigation and hearing (Par. 5, R. 2-3; quoted in our Supporting Brief, p. 9).

G. It follows that this proposition of the Court of Appeals is clearly erroneous, and that it utterly fails to add any weight to that Court's opinion, or to Respondent's argument here.

IV.

Nor was the Court of Appeals' opinion strengthened in any way by its reference to *Crowell* vs. *Benson*, 285 U. S. 22, at pp. 54-62.

A. The Court of Appeals plainly misapprehended and misapplied that portion [pp. 54-62] of the opinion of this court in the *Crowell* vs. *Benson* case.

B. As a further make-weight in connection with its [erroneous] decision overruling that of the Supreme Court of Puerto Rico as to the employer's right of appeal under Section 9, of which the Respondent company had not availed itself, and following what the Court of Appeals had said in relation to the assumed effect of the last paragraph of Section 7 of the Act [*ante*, "*III*", pp. 7-11] that Court added (*Opinion*, R. 64):

"The bill should have been retained and the fact redetermined whether the plaintiff was or was not insured, *for that is a jurisdictional fact open to redetermination in this proceeding. Crowell* v. *Benson*, 285 U. S. 22, 54-62." (*Italics supplied*)

And again, near the end of its opinion, the Court of Appeals, once more directly after another reference to its [*erroneous; ante*, pp. 7-11] assumption concerning the supposed effect of Section 7 of the Act as opening to Respondent a right to re-litigate the merits of the Commission's decision, in defending a suit brought by the Attorney General to enforce collection of the compensation ordered by the Commission—[of which supposed "legal remedy of defense" it is said the Respondent would be "deprived" and thereby subjected to "irreparable damage", and "fraud" "practiced upon it" (R. 64), by sustaining the present proceeding in distraint by the Treasurer, in lieu of a suit to enforce collection]—adds (R. 68):

"And this is so without regard to whether the finding of the Workmen's Relief Commission in its orders of April 25, 1928—that the plaintiff was an uninsured employer—was jurisdictional or not. *We think, however,* that the finding of the Workmen's Relief Commission of April 24, 1928, that the plaintiff was uninsured, *was a condition precedent* to its *exercise of jurisdiction* to make the compensation awards against the plaintiff, and that, *being a jurisdictional fact,* it is open to collateral attack in this proceeding. *Crowell* v. *Benson*, 285 U. S. 22, 54-62." (*Italics supplied*)

C. THIS WAS A PLAIN MISUNDERSTANDING AND MISAPPLICATION OF THAT PORTION OF THIS COURT'S OPINION IN *Crowell* v. *Benson*.

D. *Respondent,* in its Brief in Opposition here, *does not even attempt to defend this proposition* of the Court of Appeals. It does not even mention it; does not cite *Crowell* v. *Benson* at all.

E. **There was no "jurisdictional fact" involved here.** Under the Puerto Rican statute [Sections 7 and 20, in connection

tion with Section 2, Laws of 1925, pp. 906-908, 924-926, 942-944; Appendix to our Petition, pp. 33-34, 34-35, 39-40],—the determination of whether or not the employer was an "insured" or an "uninsured" employer, within the meaning and requirements of Section 13 as amended by the Act of September 1, 1925 (Laws of 1925, pp. 938-942; Appendix to our original Petition, pp. 36-38), **was no more "jurisdictional" than was the determination of any other fact to be determined by the Commission;** e.g. the facts of the happening of the accident; of "the cause or causes thereof"; of "the character, nature and extent of the injuries sustained"; of the fact of the deaths ensuing; or of any other of the essential facts to be determined.

Under this statute *the Commission was expressly charged to make the determination of the fact* whether the employer was "insured" or was "uninsured"; and the Commission's determination of this question, either the one way or the other, did not deprive it of jurisdiction, nor affect its jurisdiction in any way, any more than did its determination, for example, of whether or not the death had ensued as a result of the accident. *Whichever way the Commission determined this question* of "insured" or "uninsured", *it still retained jurisdiction*; and it was still its duty to proceed, and to make the appropriate award.

If, on the one hand, it found that the employer was "insured" within the meaning of the Act, then it was its duty to proceed to adjust the compensation and to order it paid out of the "Government Trust Fund" [Section 7 of the Act, in connection with Section 2]. If, on the other hand, the Commission found that the employer was "uninsured" within the meaning of the Act, then it was likewise its duty to proceed to adjust the compensation, and to "charge said employer" with the amount [Section 7 in connection with Section 20, *supra*]. **In either event the Commission retained jurisdiction** and was required to proceed

to make its findings and order. *Neither finding ousted its jurisdiction.*

Under these circumstances the finding was in no sense a finding of a "jurisidictional fact" within the meaning of *Crowell* v. *Benson, supra.*

F. *It is only in relation to those fundamental facts upon the existence of which the power of the quasi-judicial administrative agency to proceed at all depends, that the rule* of that portion of the opinion of this Court in *Crowell* v. *Benson* [285 U. S. at pp. 54-62], here relied upon by the Court of Appeals, applies.

This court, in that case, after carefully pointing out the finality of the determinations of such Commissions or other *quasi*-judicial bodies in relation to all matters with the determination of which they may be charged by the Legislature, within the limits of the Legislature's constitutional powers [*Crowell* v. *Benson, supra,* 285 U. S. 22, 46-51, 52; *ante,* p. 6], expressly points out [*ib.*, at pp. 54 *et seq.*]:

> "*A different question is presented* where the determinations of fact are fundamental or '*jurisdictional*', *in the sense that their existence is a condition precedent to the operation of the statutory scheme.* These fundamental requirements are that the injury occur upon the navigable waters of the United States and that the relation of master and servant exists. These conditions are indispensable to the application of the statute, not only because the Congress has so provided explicitly (Sec. 3), but also because the power of the Congress to enact the legislation turns upon the existence of these conditions.
>
> "In amending and revising the maritime law, the Congress cannot reach beyond the constitutional limits which are inherent in the admirality and maritime jurisdiction. (pp. 54-55) • • •.
>
> "In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have we simply the question of due process in relation to notice and

hearing. It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions." (at p. 56). [*Italics supplied*]

And this Court there expressly points out that that *limitation or exception to the general rule of the finality* of such *quasi*-judicial Commissions' determinations has no application to the ordinary case where, as here, the Commission is exercising powers with which it is vested by the Act of a State [or Territorial] legislature not limited in its distribution of judicial powers by constitutional limitations, or by Article III of the Federal Constitution. The opinion proceeds [*ib.*, at p. 57]:

> "In this aspect of the question, the irrelevancy of State statutes and citations from State courts as to the distribution of State powers is apparent. A State may distribute its powers as it sees fit, provided only that it acts consistently with the essential demands of due process and does not transgress those restrictions of the Federal Constitution which are applicable to State authority."

G. *In this respect, the powers of the Legislature of Puerto Rico are as unlimited as those of the legislatures of the States;* whence it follows that *the State decisions* ARE *directly applicable here.*

H. Article III of the Federal Constitution has no application to the exercise of the Territorial Legislature's powers in this respect. It is settled that the courts established in Puerto Rico under the authority of the Organic Act of the Congress,—[including even the so-called "District Court of the United States for Puerto Rico"],—are not constitutional courts of the United States exercising any of the federal judicial power under Article III of the Constitution; but are simply "legislative courts" (*Romeu* v. *Todd*, 206 U. S. 358, 368; *Balzac* v. *Porto Rico*, 258 U. S. 298, 312), created under the authority of the

Congress in the exercise of its plenary powers under Article IV, Section 3, clause 2 of the Constitution "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". Under this plenary constitutional authority, the Congress, by the Organic Act for Puerto Rico of March 2, 1917 (c. 145, 39 Stat. 951 *et seq.*), has, as above noted (*ante*, p. 5), granted to the Legislature in the broadest terms, without any limitation whatever in this respect, "all local legislative powers", to "extend to all matters of a legislative character not locally inapplicable" (Secs. 25, 37), expressly including (Sec. 40) the "authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Porto Rico".

There is nothing anywhere in that Organic Act,—[including the provisions of Sections 41 and 42, or in any other of the provisions relating to the United States District Court for Puerto Rico], or in any of the other provisions of the Act relating to the courts or judicial procedure,—or in any other Act of Congress,—"inconsistent" with the Legislature's grant to the Workmen's Relief Commission of the powers given it by the Act of 1925 here in question. In relation to all those matters the Legislature, as this court has emphatically said in the *Shell Company* case, *supra*, possesses substantially all of the powers habitually exercised by State legislatures (*Puerto Rico* v. *Shell Co.*, *supra*, 302 U. S. 253, 260-262; *ante*, p. 5).

I. It follows that *the limitation or exception* to the general doctrine of the finality of the determinations of such *quasi*-judicial Commissions, *with reference only to fundamental jurisdictional questions arising primarily from constitutional limitations*, stated on pages 54-62 of the opinion of this court in *Crowell* v. *Benson*, *supra* [285 U. S. 22, 54-62], *has no application here;* and that the

portion of the opinion of the Circuit Court of Appeals hereinbefore quoted (*ante*, p. 12), relying upon that exception, reveals a misapprehension and a misapplication by the Court of Appeals of that decision of this court.

J. As this court has expressly noted in subsequent cases, that limitation in *Crowell* v. *Benson* applies only to such cases of fundamental lack of jurisdiction. It is not applicable to any case of a decision by such a Commission as this, one way or the other, of any question lying within the boundaries of the Commission's jurisdiction. *Shields* vs. *Utah Idaho R. Co.*, *supra*, 305 U. S. 177, 184-185; *St. Joseph Stockyards Co.* v. *United States*, 298 U. S. 38, 82; *Washington Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142, 147.

V.

Respondent contends (*Brief in Opposition*, pp. 4, 7-8),

> "(3) That, in any event, the awards could not be collected by distraint or summary attachment (R. 66-67)."

A. This refers to that portion of the opinion of the Court of Appeals which overrules (R. 64-68) the unanimous decision of the Supreme Court of Puerto Rico (R. 32-34), unanimously adhered to by that court upon reargument (R. 49-53), that the Treasurer's procedure by "distraint" to enforce payment of the Commission's award is in accordance with the provisions of the local statutes, and is correct.

B. This again, as is pointed out in our original Supporting Brief here [*Point VI*, pp. 28-30], is a question of the propriety of overruling the Territorial Supreme Court's interpretation of the local Territorial statutes relating to the procedure to enforce collection of the Commission's award, after it had become final. Here again the Circuit Court of Appeals, as was pointed out in our original Supporting Brief, was in error in overruling the local court's decision on this local question, and in failing

to accord the local decision the respect to which it was entitled under the established rule of this Court.

C. Here also this error of the Circuit Court of Appeals, as was pointed out in our original Petition [p. 3; last sentence under "Question Presented"] harks back to, and is based upon, and follows its basic error in not following the insular Supreme Court's interpretation of Section 9 of the Act allowing the employer an unrestricted appeal from the Commission's order, of which this Respondent should have availed itself.

D. Since the Commission's order, in the absence of appeal, had become final and binding between the parties upon the expiration of the thirty days within which the appeal might have been taken, and had thereby acquired the finality of a judgment, the insular Supreme Court was clearly right in treating it as having that finality for the purpose of supporting the Treasurer's distraint proceedings, and in holding that the litigation had *"terminated"*, within the meaning of the saving clause in the repeal section of the Act of 1935 relative to *"pending litigations • • • until their termination"* (Sec. 34, Laws of 1935, pp. 318-320; Appendix to our Petition, pp. 42-43); and, therefore, that the saving clause did not apply here, and that the Treasurer's collection proceeding was correctly instituted in accordance with the procedural statutes in force at the time when it was begun; that "this case was *terminated* by the order of April 24, 1928, the execution of which is now intended" (R. 33; *italics supplied*).

E. The Court of Appeals' contrary opinion is thus stated by that court (R. 67):

> "The Supreme Court concluded that, when the Workmen's Relief Commission, under the Act of 1925, made the orders assessing the compensations in question and sent them to be collected by the Attorney General by suit in a court of competent jurisdiction, the litigation or prosecution of the claims

was then terminated. *But we think that when the claims were sent to the Attorney General to bring suit against the plaintiff, the prosecution of the claims had just started, not terminated,* and that the Supreme Court was clearly wrong in holding that they were terminated." (*Italics supplied.*)

F. This in turn is clearly based upon the Court of Appeals' preceding erroneous assumption (R. 64, and 68; ante, "III", pp. 7-11) that under Section 7 of the Act the Respondent would have had open to it, in defense of any suit brought by the Attorney General to collect the compensation awarded by the Commission, an opportunity to re-litigate, on the merits, the questions already determined by the Commission.

The error of the Circuit Court of Appeals in that respect is plain, as hereinbefore pointed out.

G. It necessarily follows that it was likewise in error in overruling the insular Supreme Court upon its decision of the point here directly under discussion. [Even regardless of the respect which should have been paid, under the established rule, to the decision of that local Territorial Supreme Court on this question of the construction of local Territorial procedural statutes].

VI.

Finally, it is necessary to observe that **Respondent's** Brief in Opposition rather persistently attempts to prejudice the Petitioner's case by **unwarranted suggestions** that "*the equities of the case* are clearly with the Respondent" (*Brief,* p. 5; *italics supplied*); that (*Brief,* p. 6) in its bill of complaint the Respondent

> "alleged that it was an *insured employer* and that this was a matter of record with the Workmen's Relief Commission (R. 2) but that, nevertheless, the Workmen's Relief Commission's orders of April 24, 1928, had declared that respondent was not an insured employer";

that the stipulation (R. 12-13) on which the case was tried "confessed the ultimate facts of the bill" and that:

> "In the light of these facts it is clear that petitioner cannot at this late date dispute that the respondent was an insured employer";

that, if the respondent had not been an insured employer,

> "that fact would and should have been raised by the filing of an answer to the bill";

that "However, petitioner filed no answer"; and that

> "it was only in the Circuit Court of Appeals that petitioner first suggested that respondent had not 'negatived all possible hypotheses' so as to establish beyond doubt that respondent was insured";

and Respondent calmly assumes that (*Brief*, p. 6):

> "*Since respondent was insured* the orders of the Workmen's Relief Commission were issued illegally and without jurisdiction."

A. *That unwarranted assumption* runs all through the spirit of Respondent's Brief in Opposition. **There is no proper basis for it at all.** As was pointed out in our original Brief in Support of our Petition ("Statement of the Case", pp. 6-10 [particularly pp. 8-10]; incorporated by direct reference into the "Statement of the Case" in the Petition itself, p. 4), the Respondent company *did not directly* allege that it was an "insured employer"; but utterly failed to do so.

To the exact contrary, it carefully alleged certain particular detailed facts (R. 2-3, quoted in our original Supporting Brief, pp. 8-9), and then it alleged the *pleader's conclusion* that, by reason of those facts ["for which reason"], the plaintiff company was an "insured employer" under Section 13 of the statute,

> "as amended by Act No. 61 of 1921 (p. 491), that was then in force",

that is to say, as the statute stood on July 15, 1925, when the plaintiff says it filed its annual statement (Complaint,

Par. 3, R. 2),—*wholly ignoring the stricter requirements of the amendatory Act of September 1, 1925,* which had taken effect six weeks later, before the accident occurred on February 12, 1926, when these men were killed, and constituted the governing law at that time, by which the question of "insured" or "uninsured" employer was to be determined by the Commission. [*Confer* our original Supporting Brief, pp. 8-10, 11-14, 15].

B. *Respondent-plaintiff utterly failed to make any broad or positive or direct allegation that it was an "insured" employer;* such, for example, as was made by the respondent *Benson* in *Crowell v. Benson, supra,* 285 U. S. 22 [at p. 37], *"that Knudsen was not in the employ of the petitioner".*

The present Respondent avoided making any such direct allegation.

C. The above quoted suggestion in Respondent's brief [*Brief,* p. 6; *ante,* p. . . .], that this state of the pleadings [*which Respondent does not attempt directly to minimize or explain*] was "first suggested" in the Circuit Court of Appeals, is manifestly erroneous.

The record shows that Respondent made a similar attempt in the insular courts to interpret the stipulation (R. 12-13) upon which the case was tried as "confessing," as among the "ultimate facts," this contention of the Respondent that it was really an "insured employer," and that the Commission nevertheless *senselessly* held it to be "uninsured", and shows that the insular courts expressly rejected this interpretation of the stipulation. The Supreme Court of Puerto Rico said, in its opinion, as was pointed out in our original Supporting Brief here (R. 29-30; quoted, *Supporting Brief,* p. 10):

> "It is undisputable that *what was admitted* by defendant by said stipulation *were the facts* which occurred and which gave origin to all this proceeding since its inception. *The question* whether the Order of the Workmen's Relief Commission is or is not

valid *is not a question of fact* but of law exclusively." (*Italics supplied.*)

D. *Plainly, the ancient established rule, both of good pleading and of good sense, is to be applied here.* The allegations of this bill of complaint are to be taken most strongly against the pleader itself. Manifestly, if the facts had warranted it, this company's counsel would surely have made the direct allegation that it was "insured" at the time that this accident happened, and with relation to these men who were killed. Reading between the lines of this bill of complaint, manifestly what actually happened was that, back on July 15, 1925, before the adoption of the more stringent requirements of the amendatory Act of September 1, 1925 [which took effect six weeks later], and before there was any statutory requirement of the *payment of the premiums* at the same time that the statement was filed or in order to become an "insured employer", the company's local representatives filed a statement and awaited the processes of notification of the amount of the premiums by the Treasurer before they should pay them, and failed to notice, or ignored, the requirement [*Proviso*, Sec. 13] of a special statement as to temporary employees for less than a semester; and that when, afterwards, the more stringent amendatory statute of September 1, 1925, took effect, requiring *payment of the premium as a condition precedent to becoming an "insured employer"*, the company's local representatives failed to pay any attention to it; and that things ran along that way until after this accident, and after these men were killed; and that, therefore, the Commission necessarily found that, as to them, at that time, this company had failed to become an "insured employer", but was, on the contrary, an "uninsured employer", with relation to that accident; and, therefore, necessarily, under Sections 7 and 20 of the Act, the Commission charged the compensation against the company. And that the company's local representatives, knowing those facts, rea-

lized that a direct appeal from the Commission's order to the District Court under Section 9, on the merits, would be useless, and would merely result in its affirmance.

And that, therefore, in view of those facts, the company did not prosecute any such direct appeal; but, instead, waited until after the thirty days limited by the statute for the appeal had expired, and then attempted to assail the Commission's order collaterally by the certiorari proceedings which were ultimately dismissed by the insular Supreme Court on the ground that the Commission's order, thus become final after the expiration of the statutory period for appeal, was not subject to such a collateral attack. And then the company, finally, when faced with the present distraint proceedings of the Treasurer, again attempted this second collateral attack, by this injunction suit, upon which, once more, the insular courts held that the Commission's order had become final, and not subject to collateral attack; and therefore dismissed the present injunction suit.

CONCLUSION

For the reasons stated in our original Petition here, as well as in the Supporting Brief and in this brief, it appears plain that the decision of the Circuit Court of Appeals overruling the insular Supreme Court's interpretation of the controlling local statutes in this case was wrong; that for the reasons stated in our original Petition ["Reasons for Granting the Writ" pp. 4-5], certiorari should be granted; and that the judgment of the Circuit Court of Appeals should be reversed, and that of the Supreme Court of Puerto Rico affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, Treasurer,
Petitioner,

vs.

THE TEXAS COMPANY (P. R.), INC.,
Respondent.

REPLY BRIEF FOR PETITIONER ON WRIT OF CERTIORARI

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SUBJECT INDEX

Page

TABLE OF CASES

STATUTES

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I

Petitioner in reply to the "Brief for the Respondent, On writ of certiorari", desires to rely on what is said in Petitioner's Reply Brief heretofore filed herein in reply to respondent's brief in opposition ["Reply Brief for Petitioner, In Reply to Respondent's Brief in Opposition"]; and accordingly requests that that brief may stand and be considered as a brief [or as a portion of the brief] for petitioner in reply to respondent's brief on the writ of certiorari.

Supplementing what is said in that former reply brief, petitioner desires to add the following:

II

Respondent in its present brief "On writ of Certiorari" again *repeats* ["Facts", Respondent's Brief pp. 2-4 and following] *its unwarranted assumptions* that:

(1) *"All of the laborers employed by respondent at that time were insured"* [i.e., in February, 1926, at the time the deaths occurred]; (2) That *"respondent had complied with all the requirements of said Act necessary to render it an insured employer"*; (3) That it *"had paid the required premiums"* [i.e., *had paid them prior to* the accident and the deaths of these laborers on February 12, 1926]; (4) [By inference, Brief, p. 3], that the Supreme Court of Puerto Rico affirmed the dismissal of respondent's former petition for certiorari *on the sole ground* that certiorari under the Puerto Rican Code "applied to review the actions of courts only and not of administrative bodies"[1]; (5) That by the stipulation on which the case was tried (R. 12-13) petitioner had *"confessed"* respondent's *conclusion* [of fact or of law] that it was an *"insured employer"*, and that (*Brief*, p. 6 and elsewhere) *"it cannot be disputed that respondent was an insured employer"*; (6) That petitioner should have set up by answer in the District Court the fact that respondent was not actually an "insured employer"[2]; and (7) That (*Brief*, p. 11 and elsewhere) *"no such point of pleading was made"* by petitioner in the insular courts [*i.e.*, that the complaint failed to state facts sufficient to show that respondent actually was an "insured

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[1] The bill of complaint alleges only that the "Three classical certioraris numbered * * * were dismissed by judgments entered on July 23, 1928, because of lack of jurisdiction" (Par. 7, R. 3),—without any further limiting statement as to the grounds of the dismissal.

[2] Despite the fact that this was respondent's bill for an injunction, and that defendant-petitioner was standing on his demurrer on the ground, among others, that the complaint failed to state facts sufficient to constitute a cause of action, in view of its failure to allege the essential facts necessary to show that respondent actually was an "insured employer" [but relied instead on its asseverations of the pleader's *conclusions*].

employer"], but was raised for the first time in the Circuit Court of Appeals.

Petitioner has already answered all of these erroneous assumptions, in his Petition for Certiorari and Supporting Brief, and his Reply Brief in reply to respondent's brief in opposition to the Petition; all of which respondent apparently ignores.

III

In view of respondent's (wholly unwarranted) *repeated assertions* that petitioner, by the stipulation upon which the case was tried (R. 12-13), has "confessed" as a "fact" that the respondent was "an insured employer" at the time of the accident and the deaths of these men, and that the petitioner did not raise any question on that score in the insular courts, attention is invited to what was said on that score by the Supreme Court of Puerto Rico (*Opinion*, R. 29-30):

> "As plaintiff repeatedly insists in its brief that defendant confessed its status as insured employer as well as the illegality of the orders of the Commission, the execution of which it prays first to be enjoined and then set aside by virtue of the injunction, it is proper to state that this is denied by defendant in its brief as follows:
>
> " ' " ' . . . in our case plaintiff has never proved that it does not owe the amount whose payment is demanded; and to the contrary, there exists an official order of the Workmen's Relief Commission to the effect that this employer, because of its non-insured status should pay the compensation awarded to the insured workmen.
>
> " 'Plaintiff further alleges that inasmuch as by the stipulation of facts filed before the court below the ultimate facts of the bill were confessed, it should be accordingly understood that defendant admitted that the orders of the Workmen's Relief Commission of April

24th, 1928 were issued against the express wording of the law, and were therefore null and void. Letter A of said stipulation reads as follows:

> 'Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law it might contain.'
>
> "'It is undisputable that what was admitted by defendant by said stipulation were the facts which occurred and which gave origin to all this proceeding since its inception. The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively.
>
> "'As it can be easily determined from the contents of the stipulation in question, the only conclusion which can be reached is that the parties wanted to argue and submit to the inferior court questions of law, to be limited to the following:' (Same as in the stipulation.)"

"Although the first paragraph of the stipulation is not as clear and concrete as it should have been, the same is in our opinion susceptible of the interpretation put to it by defendant, an interpretation which makes defendant consistent with the position he assumed before the District Court and before this Supreme Court.

"This point thus clarified, we find an order issued by the Workmen's Relief Commission on April 24th, 1928 awarding compensation to the dependants of the deceased workmen, which was to be paid by plaintiff because, as declared by the Commission, it was not an insured employer."

It is manifest that not only was the question raised in the insular courts, but it was decided there, adversely to respondent's contention.

IV

Respondent says (*Brief*, p. 11) that the respondent-company's failure to comply with the requirements of

Section 13 of the Workmen's Compensation Act of Puerto Rico as amended by the Act of September 1, 1925 (*Appendix to our Petition*, pp. 36-38), particularly in regard to the requirements of the statute as amended on that date [five months before the accident], of *actual payment of the premiums* before becoming an "insured employer" and *of additional statements and payment of premiums in regard to workmen employed for "less than a semester"*, should have been set up by the Treasurer-petitioner by way of answer in the District Court; and could not be relied upon by way of demurrer to the complaint. In support of that contention respondent says (Brief, p. 11) that:

> "It is a recognized rule of pleading that where a party relies upon a statute containing a general clause followed by an exception or proviso in a subsequent substantive clause, such exception is a matter of defense and need not be negatived."

And in support of that contention respondent cites *McKelvey* vs. *United States*, 260 U. S. 353, 357, and earlier cases.

But respondent overlooks:

(1) That this is not a case of "a statute containing a general clause followed by an exception" or by a "*proviso*" in the sense of an exception, such as that to which the rule relates, as laid down in the cases which respondent cites. The provisions in Section 13 of this Puerto Rican Workmen's Compensation Act, as amended on September 1, 1925 (*Appendix to our Petition*, pp. 35-38, *supra*), are *not at all in the nature of exceptions* to the general requirements of the statute; but, on the contrary, *are additional requirements*, or *parts of the sum of the total requirements*, in order that an employer may become an "insured employer" under the statute. Until he has complied with all of those require-

ments, he has not become an "insured employer". And consequently, in undertaking to allege, in accordance with the requirements of Section 103 of the Code of Civil Procedure of Puerto Rico, "A statement of the facts constituting the cause of action"[3], the plaintiff must necessarily allege compliance with all of this bundle of requirements, all of which together make up his cause of action, and each of which is as essential to it as any other of them.

While the statute employs the word *"provided"* (Petition, Appendix, p. 36, *supra*) in introducing the requirements concerning the additional statements required for men employed for less than a "semester", yet that word is there employed, not at all in the sense of introducing an exception to the generality of the preceding requirement; but, instead, in the sense of *"And further"*, or *"And also"*, or *"And in addition"*, in order to introduce a further additional requirement standing on the same footing as the requirement stated in the preceding clause. The use of the word *"Provided"* in this place in the statute is really a somewhat inaccurate use of the word.

(2) This is not a complaint founded upon the statute. It is, on the contrary, in effect a suit to enjoin the execution of a judgment,—of the administrative order of the Workmen's Relief Commission after full hearing, finding the amount of the compensation and charging it against this corporation-respondent under Sections 7 and 20 of the Act as amended September 1, 1925 (*Petition, Appendix*, pp. 34-35, 39-40); an order which the

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[3] Code of Civil Procedure of Puerto Rico (Edition of 1933), Sec. 103, p. 41:

"Section 103.—(426 Cal.) The complaint must contain: • • •

2. A statement of the facts constituting the cause of action, in ordinary and concise language."

Supreme Court of Puerto Rico holds to be (*Opinion Denying Reconsideration*, R. 51):

> "a final order handed by certain administrative organism in the exercise of its authority after due consideration of the facts and of the law, with a hearing or opportunity of a hearing to the interested parties, and against which recourse could have been taken to the courts of justice.[4] By it certain person or entity is sentenced to pay a certain sum of money. And by both laws it is sent to the treasurer for its execution".

Failing to avail itself of its right to appeal, the corporation seeks to enjoin the execution of the order. Manifestly its complaint, in order to contain "a statement of the facts constituting the cause of action" must set up all the facts necessary to show that the order was not only erroneous but was beyond the jurisdiction of the Commission. In regard to the particular question here raised by this corporation of its being an "insured employer" it must allege all the elements required by the statute to make it an "insured employer"; which it has not done.

(3) This question of pleading and procedure under the local statute, the Code of Civil Procedure of Puerto Rico, *is peculiarly one of those questions*, which, under the established rule of this Court, is *within the sphere of the local Territorial court of last resort*, the Supreme Court of Puerto Rico, *upon which its decision is not to be disturbed unless "clearly erroneous"*. *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511; *Diaz* vs. *Gonzalez*, 261 U. S. 102, 105, 106; and other cases cited in the footnotes to the *Yabucoa Sugar Co.* case (306 U. S. at pp. 509-510), and in our original Petition here (pp. 4-5) and Supporting Brief (p. 24).

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[4] *I.e.*, by direct appeal under Section 9 of the Act.

The insular Supreme Court held the corporation's complaint insufficient.

V

Respondent says (*Brief, Point* III, p. 16 *et seq.*) that the construction of Section 9 of the Act as amended by the Act of September 1, 1925 "is not determinative of this case, as respondent had no reason to appeal under that section even if it could have done so".

A. *Respondent here expressly admits* (*Brief*, p. 17) that the decision of the Circuit Court of Appeals was erroneous on the primary point in this case, upon which the entire reasoning and decision of the opinion of the Circuit Court of Appeals really hangs, *viz.*, in its construction of Section 9 of the Act [*Opinion, C. C. A.*; R. 62-64] as not permitting any appeal to the employer in a case where the Commission had held that the employer was "uninsured" and therefore that the compensation was payable by him, instead of out of the "Government Trust Fund". *That is the primary question upon which the Circuit Court of Appeals overruled the Territorial Supreme Court and reversed its decision.* [*Petition for Certiorari*, 2-3; *Supporting Brief, Point I*, pp. 17-23] The Territorial Supreme Court had held that the employer was entitled to an unrestricted appeal in any case where the decision of the Commission "is to the effect that the accident is one for which compensation is granted under this Act" (Sec. 9 of the Act), *regardless* of whether the Commission had found that the employer was an "insured employer" and hence that the compensation was payable out of the "Government Trust Fund" under Section 2 of the Act, or had found that the employer was an "uninsured employer" and hence that the compensation was payable by him under Sections 7 and 20 of the Act. **The respondent now expressly admits that the insular Supreme Court was right on this primary**

question in the case, and that the Circuit Court of Appeals was in error. Respondent now says (Brief, p. 17):

> "The construction of Section 9 of the 1925 Act as permitting only insured employers to appeal originated with the Circuit Court of Appeals itself. *Respondent has never contended that Section 9 should be so construed*". (*Italics supplied*)

B. Respondent now says that its position is (Brief, p. 17):

> "It is respondent's position that although both insured and uninsured employers could appeal under Section 9 of the 1925 Act (while that Act was in effect), *the sole matter which could be adjudicated on such an appeal was the question whether the employee was entitled to compensation* (a matter never disputed in this litigation), and not the issue of whether the compensation was to be paid out of the State Fund or collected from the employer". (*Italics supplied*)

This is a reversion to the position taken on this point by the respondent corporation as appellant in the Circuit Court of Appeals ("Brief for Appellant, The Texas Company (P. R.) Inc.", pp. 10-12; certified copy on file here in this case). It was [*correctly*] ignored by the Circuit Court of Appeals and, in effect, overruled; as it had been by the insular Supreme Court.

This contention now made by respondent, is, in effect, that, since the jurisdiction of the insular District Court to entertain the employer's appeal under Section 9 of the Act is limited to those cases in which (Sec. 9; *Petition, Appendix*, p. 35) the decision of the Commission

> "is to the effect that the accident is one for which compensation is granted under this Act",

therefore *that one single question*, which is the basis of the jurisdiction for the appeal, *is the only question which can be considered or adjudicated on the appeal* to the

District Court (or by the insular Supreme Court on appeal to it from the insular District Court), viz., *whether or not the accident actually is* "one for which compensation is granted under this Act".

The contention seems really frivolous. Respondent cites no authority in support of it. On that theory it would follow, for example, that since the right of appeal from the Supreme Court of Puerto Rico to the Circuit Court of Appeals is dependent upon "the Constitution or a statute or treaty of the United States or any authority exercised thereunder" being involved, or else "the value in controversy, exclusive of interests and costs" exceeding $5,000, or the case being "*habeas corpus* proceedings" [Judicial Code, Sec. 128(a), "Fourth", as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936], therefore, on any appeal to the Circuit Court of Appeals from the insular Supreme Court, *the only question open to consideration or adjudication in the Circuit Court of Appeals would be the single question* of whether a Constitutional or federal question was involved in the case, or of whether the amount involved exceeded $5,000, or of whether the proceeding was really a *habeas corpus* proceeding, as the case might be; *and that no other question could be considered on the appeal.*

Of course that was not the intention of the Legislature in allowing the employer an appeal under Section 9 in any case where the Commission found that the accident was one for which compensation was granted under the Act. The Legislature did not intend to do a vain or useless thing. Of course, consequently, the insular Supreme Court was right in considering the appeal "a general appeal" [Opinion denying this respondent's certiorari, *Texas Co.* vs. *Workmen's Relief Commission*, 40 P. R. Rep. 456, 458, bottom of the page, quoted with approval, and followed in its opinion in the present case, R. 32].

C. Consequently there is no point at all to respondent's contention here (Brief, p. 15, *supra*) that the respondent "had no reason to appeal" under that section,—at least in so far as this question is concerned of the effective scope of the appeal, if it had availed itself of it. Clearly, it would have been "a general appeal", as the insular Supreme Court terms it (R. 32, *supra*), upon which the corporation could have had a trial *de novo*.

D. In so far as the other branch of the respondent's contention under this point of its brief is concerned,—and upon which the Circuit Court of Appeals held with it (R. 63 *et seq.*),—that under Section 7 of the Act of 1925 (*Petition, Appendix*, p. 34) upon the insular Attorney General's action to collect the compensation awarded by the Commission and charged to the "uninsured employer" under Sections 7 and 20 of the Act, the employer could in that action re-litigate the liability found by the Commission, and could in effect have a trial *de novo*, and could then open up again all the questions already determined by the Commission, including the question of whether or not it was "uninsured", with like effect substantially, for all purposes, as upon the direct appeal from the Commission's order, under Section 9,—*that contention has already been answered* in our Brief in Reply to Respondent's Brief in Opposition, ("III", pp. 7-11), as well as in our brief in support of our petition (Supporting Brief, Point V, pp. 27-28).

As there pointed out, an attempt to reopen the Commission's final order by a rehearing *de novo*, by way of defense to the action to collect the award, *would be just as much an attempt at a collateral attack upon it*, as is this collateral attack by way of injunction, or as was the collateral attack by way of certiorari, denied by the insular courts.

There is nothing to the contrary in what was said by MR. JUSTICE BRANDEIS in the opinion of this Court, relied upon by respondent (*Brief*, pp. 21-22) in *Ohio* vs. *Chattanooga Boiler Co.*, 239 U. S. 439, 440. In that case this Court simply accepted the construction placed by the Ohio Supreme Court upon the particular Ohio statute there in question, citing the Ohio decisions [*Fassig* vs. *State*, 95 Ohio St., 232, 242, and others], as providing that, under that particular statute, the employer was entitled to challenge in an action for reimbursement the correctness of the award in all respects save the amount of compensation. This Court simply accepted, without discussion (289 U. S. at pp. 440-441), the decisions of the Ohio Supreme Court as to the construction of that Ohio statute. That has nothing to do with this case. The Puerto Rico statute of 1925, here involved, contains no such provision.[5]

To countenance such a collateral attack on the Commission's order would be, as this court said in *Crowell* vs. *Benson*, 285 U. S. 22, 46-47 (quoted more at length in our "Reply Brief for Petitioner in reply to Respondent's Brief in Opposition", p. 6),

> "to defeat the obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method of dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task. * * * *and the efficacy of the plan depends upon the finality of the determinations* * *." (*Italics supplied*)

---

[5] "*The Ohio law does not provide for review of an award by an appeal;* but the employer is entitled to challenge, in an action for reimbursement, the correctness of the award in all respects save the amount of compensation. (*Ohio* vs. *Chattanooga Boiler Co., supra*, 289 U. S. 439, 440-441; *italics supplied*).

That is the [*narrower*] Ohio statutory substitute for the unrestricted "general appeal" allowed the employer by Section 9 of the Puerto Rico law.

VI

The other questions raised by the respondent are already answered in our Petition and Supporting Brief and in our former "Reply Brief in Reply to Respondent's Brief in Opposition", which latter, as first above stated, it is requested may stand and be considered, in connection with this brief, as the Reply Brief for Petitioner in Reply to Respondent's Brief on Certiorari.

CONCLUSION

As hereinbefore indicated in this brief, as well as in our Petition for Certiorari and Supporting Brief, and our Reply to Respondent's Brief in Opposition, the decision of the insular Supreme Court of Puerto Rico rested, on the controlling questions here presented, upon its interpretation of local statutes and of local procedure under them. This is therefore peculiarly a case for the application of the established rule of this Court as to the respect to be accorded to decisions of the Territorial Supreme Court under such circumstances. Its decision was clearly right; and the Circuit Court of Appeals was wrong in overruling it. The judgment of the Circuit Court of Appeals should, therefore, be reversed, and that of the Supreme Court of Puerto Rico affirmed.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

ENRIQUE CAMPOS DEL TORO,
Acting Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, TREASURER,
PETITIONER,

vs.

THE TEXAS COMPANY (P. R.), INC.,
RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

T. K. SCHMUCK,
LIONEL P. MARKS,
JERROLD H. RUSKIN,
Counsel for Respondent.

INDEX

STATUTES.

All of the above statutes are quoted in the Appendix to Petitioner's Brief.

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To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, The Texas Company (P. R.), Inc., respectfully submits its brief in opposition to the petition for writ of certiorari herein, as follows:

Opinions Below.

The opinion of the District Court of San Juan, Puerto Rico (R. 14-19) is not officially reported. The opinions of the Supreme Court of Puerto Rico (R. 26-34 and R. 48-53) are reported in Spanish only (52 P. R. Dec. 658 and 53 P. R. Dec. 475). The opinion of the Circuit Court of Appeals (R. 57-68) is reported in 102 F. (2d) 710.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on March 25, 1939 (R. 68-69). The petition for writ of certiorari was filed June 22, 1939. The jurisdiction of this Court is based on Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

Statutes Involved.

The statutory provisions involved in the determination of this case are quoted in the Appendix to Petitioner's Brief.

Statement of the Case.

This proceeding commenced in the District Court of San Juan, Puerto Rico, with the filing of a bill in equity (R. 1-7) by the respondent to restrain the petitioner from collecting by distraint on respondent's property certain compensation awards of the Workmen's Relief Commission of Puerto Rico. It was respondent's contention that the awards should have been paid out of the state fund and not collected from the respondent as the employer; also that such awards could only be collected by a civil action brought by the Attorney-General of Puerto Rico, and not by distraint or summary attachment.

The case was submitted to the District Court on a stipulation (R. 12-13) which confessed the ultimate facts of the bill and provided that the case was to be determined on certain stated propositions of law. One of these propositions of law was the defense raised by petitioner that there was no jurisdiction in equity to enjoin the collection of the

awards because respondent had had an adequate remedy at law in Section 9 of the Puerto Rico Workmen's Accident Compensation Act (as amended by Act No. 102 of 1925) under which section, petitioner argued, respondent could have appealed from the orders of the Workmen's Relief Commission.

Thus the three main issues involved in this litigation from its inception have been (1) the validity of the orders of the Workmen's Relief Commission directing that the awards be collected from the respondent as the employer; (2) the jurisdiction of equity to restrain the enforcement of the said orders and (3) the authority of the Treasurer of Puerto Rico, the petitioner here, to collect the awards by distraint.

In reversing the decision of the Supreme Court of Puerto Rico (R. 26-34), which affirmed the dismissal (R. 19) of respondent's bill of injunction by the District Court, the Circuit Court of Appeals held:

> (1) That the orders of the Workmen's Relief Commission were invalid and subject to collateral attack (R. 68).
>
> (2) That there was jurisdiction in equity to enjoin their enforcement:
>
> (a) because the remedy of appeal under § 9 of the Workmen's Accident Compensation Act had not been available to the respondent (R. 64) and
>
> (b) because whether or not respondent could have appealed it had no reason to do so, as the awards could only be collected by suit by the Attorney General in which suit all defenses could be raised (R. 64).

(3) That, in any event, the awards could not be collected by distraint or summary attachment (R. 66-67).

Questions Presented.

It will be seen that the decision of the Circuit Court of Appeals was on three separate and distinct grounds, as follows:

(1) That respondent could not have appealed under § 9.

(2) That there was no reason for respondent to have appealed under § 9 whether it could or not.

(3) That in any event petitioner could not distrain on respondent's property to collect the awards.

If any one of these three holdings of the Circuit Court of Appeals is correct, the petition for certiorari should be denied.

ARGUMENT.

I.

No question is raised which would warrant granting certiorari.

The petition for certiorari is evidently based upon the theory that the Circuit Court of Appeals in its construction of § 9 of the Workmen's Accident Compensation Act, as amended by Act No. 102 of 1925, has decided an important

question of local law in a way in conflict with applicable local decisions.

Respondent submits that there is no ground whatever for granting certiorari on this theory since

(1) the decision of the Circuit Court of Appeals does not rest solely on the construction of Section 9 of the Act, as pointed out above, but rests on two other grounds either one of which standing alone would support the decision;

(2) the Supreme Court of Puerto Rico has never squarely construed Section 9 (see petitioner's brief herein, pp. 19-20);

(3) Section 9 has long since been repealed (see Laws of Puerto Rico, 1938: Act No. 85, Section 57) and has no counterpart in the existing law, so that its construction is a matter of academic interest only;

(4) the construction of Section 9 could at no time have been regarded as "an important question of local law," since that section involved a minor procedural point only.

It is readily apparent from the Statement of the Case in Petitioner's Brief (pp. 6-10) that no general questions of importance are involved in this case. It concerns only the application to the particular facts herein of procedural provisions in certain Workmen's Compensation Acts which have been repealed. Furthermore the equities of the case are clearly with the respondent as petitioner stipulated (R. 12-13) that the ultimate facts of the bill were true and that the case be determined on certain propositions of law raising procedural points only.

II.

The decision of the Circuit Court of Appeals was clearly correct.

In its bill of injunction respondent alleged that it was an insured employer and that this was a matter of record with the Workmen's Relief Commission (R. 2), but that, nevertheless, the Workmen's Relief Commission's orders of April 24, 1928, had declared that respondent was not an insured employer (R. 2) and directed that the compensation awards in controversy be collected from respondent as an uninsured employer (R. 3). The case was submitted to the District Court of San Juan, Puerto Rico, on a stipulation (R. 12-13) which confessed the ultimate facts of the bill and submitted the case on certain stated propositions of law. In the light of these facts, it is clear that petitioner cannot at this late date dispute that the respondent was an insured employer. Had respondent not been an insured employer that fact should and would have been raised by the filing of an answer to the bill. However, petitioner filed no answer and it was only in the Circuit Court of Appeals that petitioner first suggested that respondent had not "negatived all possible hypotheses" so as to establish beyond doubt that respondent was insured.

Since respondent was insured the orders of the Workmen's Relief Commission were issued illegally and without jurisdiction. As stated in the opinion of the Circuit Court of Appeals (R. 68):

> "* * * the finding of the Workmen's Relief Commission of April 24, 1928, that the plaintiff was uninsured, was a condition precedent to its exercise

of jurisdiction to make the compensation awards against the plaintiff, and that, being a jurisdictional fact, it is open to collateral attack in this proceeding."

The questions before this Court are, therefore, whether respondent had a full, adequate and complete remedy at law of which it should have availed itself in attacking the orders of the Workmen's Relief Commission and whether the remedy of distress was available to the petitioner to enforce the orders.

There can be no question as to the correctness of the decision of the Circuit Court of Appeals in holding that there was jurisdiction in equity to review the orders of the Workmen's Relief Commission since it is not disputed that the only way in which the awards could have been collected at the time they were handed down was by suit by the Attorney General in which suit respondent could have raised the defense that it was insured (see the last paragraph of Section 7 of Act No. 102 of 1925, quoted in petitioner's brief at p. 35). The only reason that respondent was deprived of this opportunity thus to defend itself against the enforcement of the illegal orders of the Workmen's Relief Commission was that statutes subsequently enacted providing other methods for the collection of the awards were improperly given retroactive application, a development which respondent could not have foreseen and which, therefore, should not be held to deprive respondent of its remedy in equity herein.

Finally, the decision of the Circuit Court of Appeals reversed the decision of the Supreme Court of Puerto Rico on an entirely separate and distinct ground: namely, that whether or not the orders of the Workmen's Relief Commission were valid and whether or not respondent could attack them collaterally, they could not be enforced by distraint.

It is not disputed that the alleged authority of the petitioner to collect these awards by distraint must be based either upon Act No. 85 of 1928 (§ 25) or Act No. 45 of 1935 (§ 15), nor is it disputed that both of these acts were passed after the awards in question were made, so that the statutes would have to be applied retroactively. To the contention that the Act of 1928 is the authority for the distraint by the petitioner, it need only be pointed out that that Act was expressly repealed by Act No. 45 of 1935 (§ 51) before the awards were ever referred to the petitioner for collection. As to the applicability of Act No. 45 of 1935, it is only necessary to quote the saving clause contained in Section 34 thereof:

> "The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workman shall be entitled to such sum of money as may be prescribed by said laws" (Laws of Puerto Rico, 1935, p. 318).

Conclusion.

The judgment of the Circuit Court of Appeals reversing that of the Supreme Court of Puerto Rico was plainly correct and was based upon three separate and independent grounds, one of which involves no question of construction of Puerto Rican Law, and another of which involves only the question of the propriety of the retroactive application of two Puerto Rican statutes. That part of the decision of the Circuit Court of Appeals which petitioner contends overruled the construction by the Supreme Court of Puerto Rico of Section 9 of Act No. 102 of 1925, and on which peti-

tioner bases his application to this Court for a writ of certiorari, is not only not necessary to the decision but concerns a statutory provision long since repealed and of no possible importance to anyone but the present litigants. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

T. K. Schmuck,
Lionel P. Marks,
Jerrold H. Ruskin,
Counsel for Respondent.

IN THE

Supreme Court of the United States

October Term, 1939

No. 132

RAFAEL SANCHO BONET, TREASURER,
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vs.

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BRIEF FOR THE RESPONDENT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

HARRY T. KLEIN,
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INDEX

Table of Cases.

Statutes.

Treatises.

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Jurisdiction.

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The statutory provisions involved in the determination of this case are quoted in the Appendix.

Statement of the Case.

The writ of certiorari herein brings up for review a judgment of the Circuit Court of Appeals, First Circuit, vacating and remanding a judgment of the Supreme Court of Puerto Rico which affirmed a judgment of the District Court of San Juan, dismissing respondent's bill to enjoin petitioner from attaching and selling respondent's properties in order to collect certain awards of the Workmen's Relief Commission of Puerto Rico. It was and is respondent's contention that such awards should have been paid out of the state fund and not collected from the respondent as the employer.

Facts.

On November 5, 1936, respondent filed in the District Court of San Juan, Puerto Rico, a bill of injunction (R. 1-7) against the petitioner, the Treasurer of Puerto Rico, alleging as follows:

(1) That, in the month of February, 1926, three laborers employed by respondent died as a result of an accident incident to their work (R. 2).

(2) *That all of the laborers employed by respondent at that time were insured* (R. 1) under the Workmen's Accident Compensation Act then in effect and that *respondent had complied with all of the requirements of said Act necessary to render it an insured employer* (R. 2-3) *and had paid the required premiums* (R. 2-3).

(3) That, nevertheless, the Workmen's Relief Commission on April 24, 1928 handed down orders awarding $2,000.00 compensation to the dependents of each of the deceased laborers and declaring that respondent was not an insured employer although it was a matter of record in the said Commission that respondent was insured (R. 2-3).

(4) That at the direction of the Commission liquidations were prepared and forwarded to the Attorney General of Puerto Rico so that he might proceed to collect from respondent a total sum of $5,954.67 for the dependents of the deceased laborers plus $720.00 administrative expenses, or a total of $6,674.67 (R. 3).

(5) That on June 2, 1928, respondent brought certiorari to review the said orders of the Workmen's Relief Commission, but said writs of certiorari were dismissed by the District Court on the ground that certiorari applied to review the actions of courts only and not of administrative bodies (R. 3). (The judgment of the District Court was affirmed by the Supreme Court of Puerto Rico on January 23, 1930. *The Texas Company (P. R.), Inc.* v. *Workmen's Relief Commission*, 40 P. R. R. 456.)

(6) That *for more than eight years* (*i. e.* from April 24, 1928 to September 14, 1936) no action was taken by the Workmen's Relief Commission, or its successor, the Industrial Commission of Puerto Rico, or by the Attorney General of Puerto Rico, to collect the compensations awarded by the said orders (R. 3-4).

(7) That on September 14, 1936, the Industrial Commission of Puerto Rico (successor to the Workmen's Relief Commission) handed down an order requesting petitioner, the Treasurer of Puerto Rico, to levy an attachment upon the respondent's property to collect one of said awards (R. 4).

(8) That petitioner on October 27, 1936, summarily attached a truck belonging to respondent, and notified respondent that he would levy execution on the said truck and sell the same, if respondent did not pay the said award (R. 4).

(9) That there was no adequate remedy at law and petitioner's action would result in irreparable injury to respondent, unless an injunction was granted (R. 6).

Respondent prayed for an injunction restraining petitioner from attaching its property or endeavoring to collect the said compensations on the ground that the orders of the Workmen's Relief Commission were void, since it appeared from their very face and from the records of the Commission that respondent was an insured employer, and on the ground that, even admitting the validity of the said orders, petitioner could not legally attach respondent's property to collect the same (R. 4-6).

Petitioner demurred (R. 9) and his demurrer was dismissed (R. 11-12). The parties then submitted the case to the Court upon the following stipulation:

> "A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.
>
> "B. The facts alleged in the bill thus confessed, the parties submit to the court the present case under the following propositions of law, the determination of which they both understand decides this case:
>
> "1. Defendant maintains that the Supreme Court of Puerto Rico having decided against plaintiff the certiorari cases Nos. 6986, 6987 and 6988 to which reference is made in paragraph 7 of the bill, the injunction now prayed for does not lie.
>
> "2. Defendant further maintains that plaintiff not having taken recourse of the remedy provided

for by Section 9 of Act No. 102 of 1925 to review the orders of the Workmen's Relief Commission, the writ of injunction does not now lie.

"3. Defendant further maintains that the orders of the Workmen's Relief Commission of April 24, 1928 described in the bill do not have the nature of final judgments under the dispositions of the Code of Civil Procedure in force, providing that a final judgment will not be executed five years after having become final, for which reason the statute of limitation has not run against the right to execute said orders, an injunction, therefore, not lying to enjoin their execution.

"4. Defendant further maintains that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in Section 25 of Act No. 85 of 1928, and not, as maintained by plaintiff, that specified by Section 7 of Act No. 102 of 1925.

"C. Plaintiff maintains the negative of all the propositions as maintained by defendant, as above expounded.

"And in order to save time and efforts, the parties now ask the court to consider the present case as tried and submitted by this stipulation, without a previous setting of same in the general calendar" (R. 12-13).

On July 22, 1937, the District Court of San Juan entered judgment dismissing respondent's bill on the ground that injunction was not a proper remedy to enjoin the collection of the compensation awards as "that would mean the enjoining of the enforcement of a public statute for the public welfare by officers of the law" (R. 19).

Respondent appealed to the Supreme Court of Puerto Rico (R. 25), and on February 11, 1938, the Supreme Court rendered its opinion (R. 26-34) and entered judgment (R. 34) affirming the judgment entered below on the grounds:

(1) that the stipulation on which the case was submitted to the District Court was "susceptible of the interpretation put to it by defendant" (the petitioner) (R. 30); (2) that the Treasurer could properly enforce the orders of the Workmen's Relief Commission by distraint under Act No. 45 of 1935 (R. 33); and (3) that respondent was not in a position to do by injunction after the years passed "what in due time it could have done by the means placed at its disposal by the law" (R. 32).

In reversing the decision of the Supreme Court of Puerto Rico (R. 26-34), which affirmed the dismissal (R. 19) of respondent's bill of injunction by the District Court, the Circuit Court of Appeals held:

> (1) That the finding of the Workmen's Relief Commission that respondent was uninsured was jurisdictional and subject to collateral attack (R. 68).
>
> (2) That there was jurisdiction in equity to enjoin the collection of the awards:
>
> > (a) because the remedy of appeal under § 9 of the Workmen's Accident Compensation Act had not been available to the respondent (R. 63) and
> >
> > (b) because whether or not respondent could have appealed it had no reason to do so, as the awards could only be collected by suit by the Attorney General in which suit all defenses could be raised (R. 64).
>
> (3) That, in any event, the awards could not be collected by distraint or summary attachment (R. 66-68).

Summary of Argument.

Under the stipulation upon which this case was submitted to the District Court, it cannot be disputed that respondent was an insured employer. Accordingly, inso-

far as they declared that respondent was an uninsured employer, the orders of the Workmen's Relief Commission were erroneous. The liability of the respondent as the employer to pay the compensation awards in controversy is a matter which the Workmen's Relief Commission was not called upon to decide. If respondent was an uninsured employer, the statute required that the Commission report the matter to the Attorney General for institution of proper action in a court of competent jurisdiction. This was the only action taken by the Workmen's Relief Commission (apart from making the awards), and there is no question of collateral attack upon a determination of that Commission.

The difference of opinion between the Circuit Court of Appeals and the Supreme Court of Puerto Rico as to the construction of Section 9 of the Workmen's Compensation Act as amended by Act No. 102 of 1925 (the Circuit Court of Appeals holding that that section gave the right of appeal to insured employers only) is not determinative of this case, for whether or not respondent could have appealed from the orders of the Workmen's Relief Commission, it had no reason to do so. The only manner in which the compensation awards could be collected from the respondent was by suit by the Attorney General in which suit respondent could raise the defense that it had been insured. Thus, the construction of Section 9 of the 1925 Act being immaterial, the decisions of this Court as to the respect to be paid to the decision of a territorial court of last resort interpreting a local territorial statute do not govern the instant case.

Even if respondent had not been insured petitioner could not legally collect the awards by summary attachment and there was jurisdiction in equity to enjoin the petitioner from so collecting them.

POINT I.

Respondent was an insured employer and the awards should have been paid out of the State Fund.

Under the stipulation of facts on which this case was submitted, it cannot be disputed that the respondent was an insured employer.

The first paragraph of the stipulation read as follows:

> "A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain" (R. 12).

As it is expressly alleged in the bill of injunction that the respondent was an insured employer (R. 2), that fact must be assumed, for it is undoubtedly one of the ultimate facts upon which the case was submitted. "Ultimate facts" include "all those facts necessary to be found in a given case in order that the determination of the right of the parties shall become a pure question of law." *United States* v. *Smith*, 39 F. (2d) 851, 854. See also *Mumm* v. *Jacob E. Decker & Sons*, 301 U. S. 168, 170.

Had respondent not been an insured employer that fact should and would have been raised by the filing of an answer to the bill. However, petitioner filed no answer, and in confessing "the ultimate facts of the bill" conceded that respondent was insured.

A comparison of Paragraph 3 of the bill of injunction (R. 2) with Section 13 of the Workmen's Accident Compensation Act of Puerto Rico, as amended by Act No. 61 of 1921, demonstrates that respondent took all the steps necessary to become an insured employer:

Respondent's Bill of Injunction.

"3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921 (p. 491), that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premium, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926" (R. 2).

Workmen's Accident Compensation Act, Section 13.

"It shall be the duty of every employer of workmen entitled to the benefits of this Act to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in Sections 11 and 12 of this Act shall be computed;

• • • • •

The insurance of every employer shall become effective on the date on which his payroll of statement is filed in duplicate in the office of the commission; • • •" (Laws of Puerto Rico, 1921, p. 490).

Petitioner argues that the bill of injunction ignores the proviso contained in Section 13 of the Workmen's Compensation Act which states that, in addition to the statement which the employer is required to file annually, a supplemental statement must be filed if any workmen are employed

"for any term or part of a semester". Petitioner states that the deceased laborers "may well have been" within this category and that the respondent "may have failed" to file the supplemental sworn statement or "may have failed actually to pay the extra premium payment required" (See Petitioner's Brief, page 13). However, there is nothing whatever in the record to support any of these theories and no such contentions were made by the petitioner either in the District Court or in the Supreme Court of Puerto Rico. Moreover, it is alleged in Paragraph 1 of the bill that the respondent "actually employed during the dates to which this bill refers, besides its office personnel, various laborers, *all of which were insured under the laws in regard to workmen's compensation in force at the dates later referred herein*" (R. 1). The clear intendment of this allegation is that if respondent employed any laborers "for any term or part of a semester," the proviso in Section 13 of the Act was complied with.

Petitioner also argues that the respondent "may not actually have paid the premium assessments prior to February 12, 1926, the date of the accident." However, here again there is nothing whatever in the record to support petitioner's contention, and this theory also, was first broached by the petitioner in the Circuit Court of Appeals. Not only does the bill of injunction allege that all of the laborers employed by the respondent were insured, but it expressly alleges (R. 2) that the Treasurer of Puerto Rico assessed, taxed, and collected the required premiums from the respondent. Furthermore, in paragraph 5 of the bill it is alleged that respondent had "paid the premium corresponding to the year within which said accident occurred" (R. 3). No answer was filed denying this.

For these reasons the theories upon which petitioner bases his argument that the allegations of the bill are insuf-

ficient are totally without basis. Furthermore, the petitioner is in error in stating that respondent is bound in order to succeed to "negative all possible hypotheses upon which the order might be sustained."

It is a recognized rule of pleading that where a party relies upon a statute containing a general clause followed by an exception or proviso in a subsequent substantive clause, such exception is a matter of defense and need not be negatived.

McKelvey v. *United States*, 260 U. S. 353, 357;
Schlemmer v. *Buffalo, Rochester, etc. Ry.*, 205 U. S. 1, 10;
United States v. *King & Howe, Inc.*, 78 F. (2d) 693, 696.

This is based on the general principle that it is not necessary to anticipate and deny matters of defense.

See

Mumm v. *Jacob E. Decker & Sons*, 301 U. S. 168, 171-2.

Even if the petitioner were correct in his assumption that as a strict matter of pleading the bill of injunction did not set out the necessary facts to establish beyond doubt that respondent was insured, it is readily apparent from the second paragraph of the stipulation that any such defect in the bill of injunction was waived by the petitioner. Nevertheless, although no such point of pleading was made either in the District Court or in the Supreme Court of Puerto Rico, petitioner sought to invoke it in the Circuit Court of Appeals and again in this Court. The portion of the stipulation referred to reads as follows:

"*The facts alleged in the bill thus confessed*, the parties submit to the court the present case under the following *propositions of law, the determination*

of which they both understand decides this case: * * *" (R. 12).

(The stated propositions of law, quoted hereinabove at pages 4-5, are all based on the assumption that respondent was insured.)

As stated by petitioner, himself, in his brief in the Supreme Court of Puerto Rico: "The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively" (R. 30). This statement of petitioner was adopted with approval by the Supreme Court of Puerto Rico (R. 30). Nevertheless, petitioner has raised these questions of fact (and for the first time) in the Circuit Court of Appeals and in this Court.

POINT II.

Respondent is not attacking any determination of the Workmen's Relief Commission on a matter within its jurisdiction.

The jurisdiction of any administrative board or commission to hear and determine a claim, or to do any other act, must be based upon the express provisions of the statute setting up such board or commission and the existence of the necessary jurisdictional facts and statutory conditions must be established before the commission's orders or findings are given any effect. They can only decide those issues which they are expressly empowered by statute to decide. As stated by this Court in *Ex parte Reed*, 100 U. S. 13, cited by petitioner on page 27 of his brief:

"We do not overlook the point that there must be jurisdiction to give the judgment rendered, as well

> as to hear and determine the cause. If a magistrate having authority to fine for assault and battery should sentence the offender to be imprisoned in the penitentiary, or to suffer the punishment prescribed for homicide, his judgment would be as much a nullity as if the preliminary jurisdiction to hear and determine had not existed. Every act of a court beyond its jurisdiction is void." (100 U. S. 13, 23.)

The existence of these basic facts, upon which the statutory jurisdiction of the commission is based, is always subject to judicial review, whether by "collateral attack" or otherwise.

> *Ex parte Reed*, 100 U. S. 13, 23;
> *Givens* v. *Zerbst*, 255 U. S. 11, 19;
> *Ng Fung Ho* v. *White*, 259 U. S. 276, 284;
> *Crowell* v. *Benson*, 285 U. S. 22, 58;
> *Borax, Ltd.* v. *Los Angeles*, 296 U. S. 10, 18.

And see *Hawkins* v. *Bleakly*, 243 U. S. 210, 215, 216.

The Workmen's Accident Compensation Act of Puerto Rico (like the Washington statute upheld by this Court in *Mountain Timber Co.* v. *Washington*, 243 U. S. 219) provides a state fund out of which all compensation claims are to be paid, and the only situation under which the Workmen's Relief Commission or the Industrial Commission can direct that a compensation award be collected from the employer is where the employer is uninsured. The sole statutory provisions authorizing such an order at the time the awards here involved were made were Sections 7 and 20 of the Workmen's Accident Compensation Act, as amended by Act No. 102 of 1925, which read as follows:

> Section 7 (last paragraph): "In the case of an accident to a laborer while working for an employer *who in violation of the law is uninsured*, the Workmen's Relief Commission shall determine proper

compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction against said employer to recover the aforesaid sum; * * *" (Laws of Puerto Rico, 1925-26, p. 926.)

Section 20. "If any accident occurs to any workman employed by an employer subject to the provisions of this Act, *who has failed to comply with said provisions relative to the submission of reports and the payment of premiums* on the dates hereinbefore specified, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation to be paid injured workmen plus expenses in the case. The commission shall report to the Attorney General the total amount of said compensation, plus the expenses in the case, in order that he, by proper action in a court of competent jurisdiction, may obtain payment of said sum." (Laws of Puerto Rico, 1925-26, pp. 942-44.)

Petitioner, by confessing the allegations of the fifth paragraph of respondent's bill of injunction (R. 2-3) admitted therefore that the orders of the Workmen's Relief Commission were without jurisdiction in so far as they purported to direct the collection of the awards from the respondent as an uninsured employer.

Petitioner contends that there was no possible lack of jurisdiction in the findings or orders of the Workmen's Relief Commission and that if there was any mistake therein, it was at the most simply a case of error in a matter which the Commission was called upon to decide. However, nowhere does he cite a statutory provision authorizing and empowering the Workmen's Relief Commission to decide the issue of whether or not an employer is insured, and the terms of Section 7 of the 1925 Act clearly indicate that this

is not one of the matters which the Commission is empowered to decide.

Not only does the act contain no express authorization to the Workmen's Relief Commission to pass upon the issue of whether or not an employer was insured, it contains an express limitation on this power, for it provides that in case of an accident to a laborer while working for an employer who, in violation of the law, is uninsured, "the Workmen's Relief Commission *shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction* * * *" (Act. No. 102, § 7; Laws of Puerto Rico, 1925, p. 926). In this language the legislature very plainly indicated its intention that the issue of the liability of an allegedly uninsured employer, such as the respondent here, was a matter to be determined by the courts in an action to be brought by the Attorney General, and it is the act of the petitioner in endeavoring to collect these awards by another procedure, a summary procedure not authorized by statute, which gives rise to this suit. This was a matter which the Commission was not called upon to decide, and which it did not decide, so that there is no question whatever of collateral attack upon a determination of an administrative body. In so far as respondent's liability as an allegedly uninsured employer was concerned, the sole power of the Workmen's Relief Commission under Sections 7 and 20 of the 1925 Act was to report the matter to the Attorney General so that he might bring the proper action in a court of competent jurisdiction and that was all the Commission did. They had no power to order the collection of awards from the respondent and they did not do so.

The vexatious questions involved in the problem of the judicial review of determinations of administrative bodies (such as the question of trial *de novo* of jurisdictional facts

involved in *Crowell* v. *Benson*, 285 U. S. 22) do not arise in the instant case since

(1) the statute required the Commission to leave the issue of the liability of the allegedly uninsured employer to the courts (Act No. 102, § 7, Laws of Puerto Rico, 1925, p. 926);

(2) the record does not indicate that the Commission made any formal determination of this issue (R. 2-3);

(3) the statute did not make findings of the Workmen's Relief Commission conclusive, if supported by evidence *

(4) there was no evidence whatsoever to support a finding that the respondent was not insured, and the records of the Commission admittedly established the contrary (R. 2).

POINT III.

The construction of Section 9 of the Puerto Rican Workmen's Compensation Act, as amended by Act No. 102 of 1925, is not determinative of this case, as respondent had no reason to appeal under that section even if it could have done so.

It has been the petitioner's contention that the respondent could have appealed from the orders of the Workmen's Relief Commission under Section 9 of the Workmen's Accident Compensation Act as amended by Act No. 102 of 1925

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* Compare, in this respect, Clayton Act § 11, 15 U. S. C. A. § 21. Fed. Trade Comm. Act § 5(c), 15 U. S. C. A. § 45(c). Tariff Act of 1930, § 337(c), 19 U. S. C. A. § 1337(c).

(Laws of Puerto Rico, 1925-26, p. 930) and that having failed to take advantage of this alleged remedy, the respondent cannot come into equity to restrain the petitioner from enforcing these orders.

The petition for certiorari herein is based upon the alleged error of the Circuit Court of Appeals in adopting a different construction of Section 9 of the Puerto Rico Workmen's Compensation Act, as amended by Act No. 102 of 1925, from that adopted by the Supreme Court of Puerto Rico. The Puerto Rican court interpreted this section as allowing both insured employers and uninsured employers to appeal from decisions of the Workmen's Relief Commission, while the Circuit Court of Appeals held that Section 9 authorized appeals by insured employers only. Petitioner argues that the Circuit Court of Appeals should have adopted the construction of the Supreme Court of Puerto Rico, unless it was clearly erroneous, since the matter was one of local law to be determined by the Supreme Court of Puerto Rico. (Citing *Rafael Sancho Bonet, Treasurer of Puerto Rico* v. *Yabucoa Sugar Company*, 306 U. S. 505, and other cases.) Respondent is in entire agreement with petitioner on this point.

The construction of Section 9 of the 1925 Act as permitting only insured employers to appeal originated with the Circuit Court of Appeals itself. Respondent has never contended that Section 9 should be so construed. It is respondent's position that although both insured and uninsured employers could appeal under Section 9 of the 1925 Act (while that Act was in effect), the sole matter which could be adjudicated on such an appeal was the question whether the employee was entitled to compensation (a matter never disputed in this litigation), and not the issue of whether the compensation was to be paid out of the State Fund or collected from the employer. Respondent has never

attacked the awards themselves—only the manner in which they were to be collected.

In any event, the question of the construction of Section 9 is not determinative of the instant case, for, as the Circuit Court of Appeals stated (referring to Section 7 of the 1925 Act which required the Commission to report awards against uninsured employers to the Attorney General for collection by suit in the proper court):

> "In this way the Legislature provided a remedy by which the employer, the plaintiff here, could plead in defense of the action that he was not an uninsured employer and have the question whether he was or not determined by a court of competent jurisdiction.
>
> "We therefore conclude that the Supreme Court, if it intended to rule that the plaintiff had a remedy by appeal under Section 9 and that the remedy thus afforded was as complete and adequate as the one sought by the bill (which it did not hold unless by inference), it was clearly wrong in so holding. In any event, at the time the orders of April 24, 1928, were made, the plaintiff had an adequate remedy at law by way of defense under Section 7 of the Act, whether it had such a remedy by appeal under Section 9 or not. Whatever remedy by appeal it may have had was, after the lapse of thirty days, lost in reliance upon Section 7 and the action of the Relief Commission in sending the compensation orders to the Attorney General for collection by suit in the proper court. Under these circumstances, if the plaintiff's bill is not retained and the Treasurer restrained from collecting the orders by distraint, the plaintiff will be deprived of its remedy by defense and fraud will be practiced upon it. This equity will not permit. The bill should have been retained and the fact redetermined whether the plaintiff was or was not insured, for that is a jurisdictional fact open to redetermination in this proceeding" (R. 64).

The Workmen's Relief Commission was without power to direct the collection of the award from the employer and since these orders were void *ab initio* if they purported to do so, the respondent's remedy to set them aside (if it had one) was either by certiorari or by injunction, and not by appeal. The orders being to that extent without jurisdiction, respondent was not bound by them and had no reason to appeal.

Respondent did bring certiorari and the Supreme Court of Puerto Rico held that certiorari lay to review the acts of the courts only, and not the acts of administrative bodies, such as the Workmen's Relief Compensation (R. 30-32).

It is true that the Supreme Court of Puerto Rico in its opinion (R. 30-32) dismissing the writs of certiorai brought by the respondent suggested that "a general appeal, it would seem, could raise the incidental question", but it did not base its decision on this ground (R. 32). Furthermore, the only ground upon which "a general appeal" could be taken, in which to raise the "incidental question" referred to, was that the accident was not one for which compensation could be granted and respondent has never so contended.

In its opinion dismissing the writs of certiorari brought by the respondent, the Court went on to say (R. 32):

> "In any event if the board was without jurisdiction then the petitioner" (Respondent here) "ought to have had other means of protecting itself that we need not suggest."

Since it had already considered the remedies of certiorari and appeal, it can only be inferred that the Court had in mind that respondent could enjoin enforcement of the awards, for no other means have ever been suggested by which the respondent could protect itself.

In his opinion in the instant case, the District Judge held that respondent could not have taken an appeal under Section 9 of the 1925 Act (R. 16). The Supreme Court of Puerto Rico in considering this point merely quoted its prior opinion dismissing respondent's writs of certiorari and added that respondent was not in a position to do now by injunction what in due time it could have done "by the means placed at its disposal by the law" (R. 32) without stating what such "means" were.

In view of the obvious doubt of the Supreme Court of Puerto Rico as to the remedy available to the respondent, and of the holding of the District Judge and of the Circuit Court of Appeals that the remedy of appeal was not available, how can it be contended that the remedy at law was "plain, adequate and complete"?

If it is doubtful whether the remedy at law is adequate, equity will assume jurisdiction.

Union Pacific R.R. Co. v. *Weld County*, 247 U. S. 282;
Dawson v. *Kentucky Distilleries Co.*, 255 U. S. 288;
Atlantic Coast Line v. *Daughton*, 262 U. S. 413;
Wilson v. *Illinois Southern Ry.*, 263 U. S. 574;
American Life Insurance Co. v. *Stewart*, 300 U. S. 203.

When in 1928 the Workmen's Relief Commission handed down the illegal orders here in question, respondent had no reason to take any action other than to wait for the Attorney General to institute suit against it to recover the amount of the awards, for not only did the orders specifically provide that the awards were to be collected in that manner, but it was the only way in which they could lawfully be collected.

Although the Circuit Court of Appeals held (R. 64) that the employer could raise the defense that he was an insured employer in any action brought by the Attorney General to collect the awards, nevertheless petitioner suggests that the action authorized by Sections 7 and 20 of the 1925 Act was in the nature of an action to enforce a judgment and no such defense could be raised. The language of Sections 7 and 20 (quoted *supra* at pp. 13-14) shows this argument to be wholly fallacious and it is clear that even if the Workmen's Relief Commission had handed down a "judgment" directing the collection of the awards from the respondent (which it did not do and was not authorized to do) that "judgment" could only be "enforced" by proper action in a court of competent jurisdiction under Section 7, in which action all defenses could be raised. It is readily apparent that the commission was not a court and had none of the inherent powers of a court and could not hand down any "judgments".

The true nature of actions under Sections 7 and 20 of the 1925 Act appears from the interpretation of the similar section in the Workmen's Compensation Act of Ohio (General Code § 1465-74) considered by this Court in *Ohio* v. *Chattanooga Boiler Co.*, 289 U. S. 439, 440. The Court, speaking through Mr. Justice BRANDEIS, held that the action was a statutory cause of action for liquidated damages based on the Industrial Commission's award and that the employer could challenge the correctness of the award in all respects save the amount of compensation, citing *Fassig* v. *State*, 95 Oh. St. 232, 242, 116 N. E. 104. In the cited case the Ohio Supreme Court said:

> "The action to recover it is a statutory action, and under the amendment the statute properly fixes the measure of recovery. The action against the employer to recover the amount so ascertained and

> fixed must be brought in a court of general jurisdiction, and the defendant employer is entitled to a trial by jury. He is entitled to make the defense that he is not an employer of five or more employes, etc.; that the injury to the beneficiary was not received in the course of employment, or that it was willfully self-inflicted; *or he might show that he had paid his premium into the insurance fund.* The defense that he would not be entitled to make in the case simply goes to the amount of compensation, for that is fixed pursuant to the statute." (*Fassig* v. *State*. 95 Oh. St. 232, 242; 116 N. E. 104, 107.)

There being no plain, complete, and adequate remedy at law, there can be no question of the jurisdiction of the District Court to enjoin the petitioner from summarily attaching respondent's properties in order to collect these awards.

POINT IV.

Whether or not the compensation awards were collectible from the respondent, they could not legally be collected by summary attachment or distraint.

Even if it be assumed that respondent was uninsured at the time of the accident, and that the awards of the Workmen's Relief Commission could properly be collected from respondent as the employer, the action of the petitioner in seeking to attach summarily the properties of the respondent to collect the said awards was unauthorized by statute and wholly illegal.

The Puerto Rican Workmen's Accident Compensation Act in force at the time of the accident and at the time the awards were made specifically provided that should an accident befall a workman employed by an uninsured employer, the Workmen's Relief Commission should determine proper

compensation and report the same to the Attorney General for institution of proper action in a court of competent jurisdiction (Sections 7 and 20; Act No. 102 of 1925). It was by authority of these provisions that the Workmen's Relief Commission issued its orders of April 24, 1928 and the orders so indicated on their face (R. 3). No other procedure for the collection of the awards was authorized by the statutes then in effect.

Petitioner claims that Section 15 of Act No. 45 of 1935 authorizes him to distrain on the property of respondent. That section reads in part:

> "In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided,* That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; * * * ." (Laws of Puerto Rico, 1935, p. 292).

That this section does not authorize petitioner to collect the awards by summary attachment or distraint is clear for the following reasons:

(1) *Section 15 of the 1935 Act does not grant the petitioner the right to distrain.*

Being a drastic remedy in derogation of private rights of property, the power to distrain and sell must be speci-

fically authorized by statute.

Caldwell v. *Eaton*, 5 Mass. 399;
Hull v. *Southern Development Co.*, 89 Md. 8, 42 Atl. 943;
3 *Cooley on Taxation*, 4th Ed., Sec. 1344.

Section 15 merely provides that compensation awarded to employees of uninsured employers shall constitute a preferred lien on all of the property of the employer. When the provisions of this section are compared with the provisions of Section 25 of the Workmen's Accident Compensation Act of 1928, which was repealed by the 1935 Act, it is apparent that while the petitioner did have the power to distrain and sell under the 1928 Act, that remedy was not made available to him under the 1935 Act. Section 25 of the 1928 Act provided that the compensation awarded to an injured laborer of an uninsured employer should "constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property." (Laws of Puerto Rico, 1928, p. 662.)

The remedy of distraint being available in Puerto Rico to collect a tax (Political Code § 315), the legislature clearly made this remedy available to collect compensation awards from uninsured employers under the 1928 Act when it provided that such awards should constitute liens "with the same legal effect" as taxes. Nowhere does the 1935 Act give such an effect to awards made thereunder, and it is clear that petitioner no longer has the required statutory authority to distrain on respondent's properties.

(2) *The compensation awards were not determined and certified for collection in accordance with the procedure required by Section 15 of the 1935 Act.*

As stated by the Circuit Court of Appeals in its opinion on this case (R. 66):

"The provisions of Section 15 are not applicable to awards of compensation by the Workmen's Relief Commission for an accident to a workman or employee in February, 1926, when the Act of 1925 was in force.

"The Manager of the State Fund, who, under the Act of 1935, is *to determine* the compensation and expenses in a given case arising under that law and certify its *determination* to the Treasurer of Puerto Rico for collection, is not the Workmen's Relief Commission that *determined* the compensation and expenses called in question in the orders of April 24, 1928. On the contrary the Manager of that Fund is a new administrative officer created under Act No. 45 of 1935, and his duties are limited to compensation cases arising under it. Clearly Section 15 of the Act of 1935 did not authorize the Manager of the State Fund, or the Industrial Commission created by that Act, to redetermine the awards made by the Workmen's Relief Commission under the Act of 1925 and certify them to the Treasurer for collection by distraint, and the allegations of the bill refute their ever having attempted to do so. All they did was to recall the old orders of April 24, 1928, from the Attorney General and order their collection by the Treasurer by distraint. Nor does it make the awards of compensation by the Workmen's Relief Commission under the Act of 1925 preferred over other liens burdening the property of the employer. *Domenech* v. *Lee*, 66 Fed. (2d) 31, 34, 35. And the enforcement of its provisions with relation to the orders of the Relief Commission of April 24, 1926 [*sic*], would also deprive the employer (the plaintiff here) of the right given him under Section 7 of the Act of 1925 to plead in defense to the action there authorized that he was an insured employer and contest the question judicially."

(3) *The 1935 Act is not in any way applicable to this proceeding.*

This is established by the saving clause contained in Section 34 thereof:

> "The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws." (Laws of Puerto Rico, 1935, p. 318.)

The Supreme Court of Puerto Rico was clearly wrong in holding that the litigations were "terminated" by the orders of April 24, 1928, and the Circuit Court of Appeals so held (R. 67). When the awards were reported to the Attorney General so that he might proceed to collect them from the respondent, the litigation of the claims rather than having been terminated was just about to start. (See the discussion *supra* at pp. 21-22.) Therefore, by the express provisions of § 34 of the 1935 Act, that Act cannot apply to this proceeding.

That the power to distrain and sell could be found only in Section 25 of Act No. 85 of 1928, and that the 1935 Act was by its own terms unavailable, has been conceded by petitioner, for it will be noted that his contention in the District Court of San Juan was that the proper, correct and legal procedure to collect the awards was that specified in Section 25 of Act No. 85 of 1928. (See the stipulation upon which the case was submitted. R. 12-13.)

Petitioner no longer relies upon the 1928 Act, as it is clear that that Act could at no time have applied to this proceeding. The accident occurred and the awards were

made prior to its enactment, and the order of the Industrial Commission of Puerto Rico which referred the awards to the petitioner was handed down on September 14, 1936 (R. 4), long after the 1928 Act had been repealed. (Act No. 45, Section 51, Laws of Puerto Rico, 1935, p. 330.)

It may also be pointed out that the 1928 Act contained a saving clause (Section 48) reading:

> "The provisions of this Act shall in no way affect pending litigation relative to workmen's compensation under previous laws." (Laws of Puerto Rico, 1928, p. 686.)

Clearly, the provisions of the 1928 Act have not the remotest relation to this litigation, yet in them alone is found the power to distrain and sell which the petitioner now asserts.

Thus, the only procedure available to the petitioner for the collection of the awards is that prescribed by Sections 7 and 20 of the 1925 Act (Laws of Puerto Rico, 1925, Act No. 102). A statute can be given a prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively.

> *Fullerton Co.* v. *Northern Pacific*, 266 U. S. 435;
> *United States* v. *Magnolia Co.*, 276 U. S. 160;
> *Brewster* v. *Gage*, 280 U. S. 327.

In view of the saving clauses contained in both the 1928 and 1935 Acts, it cannot be held to be the intention of the legislature that either should be applicable to the collection of awards made under the Act in force in 1926.

Conclusion.

The judgment of the Circuit Court of Appeals reversing that of the Supreme Court of Puerto Rico should be affirmed and the case remanded to the District Court of San Juan

ordering that court to vacate its judgment and issue an injunction restraining the Treasurer of Puerto Rico from collecting the compensation awards of April 24, 1928 by distraint upon the respondent's property.

Respectfully submitted,

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Counsel for Respondent.

APPENDIX.

APPENDIX.

The following statutes are deemed necessary for the decision of this case:

Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61, approved July 14, 1921.

"*Section 13.*—It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in Sections 11 and 12 of this Act shall be computed; *Provided*, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference. Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property of the employer just as soon as the same shall be left unpaid upon service of notice to pay. The insurance of every employer shall become effective on the date

on which his payroll or statement is filed in duplicate in the office of the commission; *Provided*, That this shall in no way affect the right of the injured laborer to the corresponding compensation.

"The failure to file such statement on or before the date above specified shall constitute a misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars, in the discretion of the court. Blanks for such statements shall be furnished upon request by the Workmen's Relief Commission.

"It shall be the duty of every employer of laborers entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to everyone of the said laborers.

"The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

"Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the difference between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act." (*Laws of Puerto Rico, 1921, pp. 490-492.*)

Appendix

Sections 2, 7, 9, 13, 20, 27, 28 and 30 of the Workmen's Accident Compensation Act, as amended by Act. No. 102, Approved September 1, 1925.

"*Section 2.*—That the provisions of this Act shall apply to laborers injured or disabled or who lose their lives from accidents occurring because of any act or function inherent in their work or employment and while engaged therein and as a consequence thereof, or from occupational diseases or death due to such occupation, as hereinafter specified; *Provided*, That the provisions of this Act shall be applicable to members of municipal fire corps, for which purpose each municipality shall include salaried firemen in its report on employees, made as an employer.

"Domestic servants and employees engaged in clerical work, in offices of any kind and commercial establishments where machinery is not used, are excepted.

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided*, That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, payable from the government trust fund.

"The sums so paid need not to be reimbursed to The People of Puerto Rico out of the fund created by this Act.

"The Commissioner of the Interior is hereby authorized to make advances on account of their com-

pensation, to workmen injured on public works, which advances shall be reimbursed to said official, if justified, out of the compensation fund, upon settlement of the compensation to workmen injured on public works." (*Laws of Puerto Rico, 1925, pp. 906-908.*)

"*Section 7.*—Every employer subject to the provisions of this Act, or the person representing him in business, shall report to the Workmen's Relief Commission as soon as possible, within a period of five days from the date of the accident, all injuries suffered by his employees in the course of their employment.

"Such reports shall be upon printed blanks furnished upon request by the commission, and shall contain the name and nature of the business of the employer, the location of the establishment or place of business, the name, age, sex and occupation of each injured employee, and shall state the date and hour of the accident, the nature and cause of the injuries sustained and such other information as the Workmen's Relief Commission may deem pertinent to request.

"The report made by the employer under the provisions of this section shall not be evidence against the employer in any proceeding under this or any other act.

"The refusal or neglect of any employer or his agent to make the report required by this section, shall constitute a misdemeanor and shall be punishable by a fine of not less than twenty-five (25) nor more than fifty (50) dollars for each offense.

"The Workmen's Relief Commission shall have power to direct the investigation of accidents by such investigators or agents as shall have been or shall hereafter be appointed by it for such purposes. The said investigators or agents shall make a thorough investigation of accidents and shall establish the cause or causes thereof, the character, nature and

extent of the injuries sustained, and shall file a full report of the said facts with the Commission, including in the said report such other facts and circumstances as in the opinion of the Commission may enable it to pass judgment on the claim for the relief of the injured workman when the said claim shall be presented to the commission as herein provided.

"The Workmen's Relief Commission shall have the power to make such further investigations as it may deem necessary for the purposes of this Act.

"The Workmen's Relief Commission or any of its members, and its investigators or agents, are hereby expressly authorized to sub-poena witnesses, under warning of punishment for contempt, to take oaths and declarations, to examine books and documentary evidence material to the case under investigation, and to visit and inspect the buildings, machinery and other property where any accident to a workman may have occurred.

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum; *Provided, however,* That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice." (*Laws of Puerto Rico, 1925, pp. 924-926.*)

"*Section 9.* Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the

accident is one for which compensation is granted under this Act.

"Said appeals shall be taken by filing in the office of the secretary of the district court, within thirty days after service of notice of the decision of the commission, a written statement of the ground for the claim and a statement of the facts on which the appeal is based. * * * " (*Laws of Puerto Rico, 1925, p. 930*).

"*Section 13.* It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in sections 11 and 12 of this Act shall be computed: *Provided*, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference.

"Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property

of the employer as soon as the same shall be left unpaid upon service of notice to pay.

"If the employer fails to file such statement on or before the date above-specified, the commission shall grant him twenty days more in which to do so; *Provided*, That if upon the expiration of said period the employer fails to file said statement, he shall be guilty of misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars; in the discretion of the court.

"The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission, accompanied by the amount of the assessment corresponding to the percentage of wages declared in said statement in accordance with the rates fixed by the Commission; *Provided*, That this shall in no way affect the right of the laborer to the corresponding compensation.

"It shall be the duty of every employer entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to, every one of the said laborers; *Provided*, That if any employer fails to comply with this requisite, he shall be guilty of misdemeanor punishable by a fine not to exceed fifty (50) dollars.

"The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

"Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to

file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the difference between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act." (*Laws of Puerto Rico, 1925, pp. 938-942.*)

"*Section 20.*—If any accident occurs to any workman employed by an employer subject to the provisions of this Act, who has failed to comply with said provisions relative to the submission of reports and the payment of premiums on the dates hereinbefore specified, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation to be paid injured workman plus expenses in the case. The commission shall report to the Attorney General the total amount of said compensation, plus the expenses in the case, in order that he, by proper action in a court of competent jurisdiction, may obtain payment of said sum." * * * (*Laws of Puerto Rico, 1925, pp. 942-944*).

"*Section 27.*—That the amounts existing in the Workmen's Relief Trust Fund created by section 1 of an act entitled 'An Act providing for the relief of such workmen as may be injured, or of the dependent families of those who may lose their lives while engaged in trades or occupations and for other purposes', approved April 13, 1916, are hereby reappropriated to carry out the provisions of this Act and shall constitute the Workmen's Relief Trust Fund hereby created together with such other sums as are hereinafter specified." (*Laws of Puerto Rico, 1925, p. 944.*)

"*Section 28.*—That all employers employing workmen subject to the terms of this Act, shall be bound to

contribute to the 'Workmen's Relief Trust Fund' in the form and manner provided herein; *Provided*, That any employer may file with any district court an application for a writ of *certiorari* in order that said court may review any decision of the commission on the levying of assessments, provided said application is made within thirty (30) days after the date of the service of notice of the levying of such assessment; *And provided, further*, That the legality of any premium fixed by the commission may be reviewed by means of *certiorari* proceedings in same manner and form hereinbefore specified, provided the application is made within the same term of thirty (30) days above established." (*Laws of Puerto Rico, 1925, pp. 944-946.*)

"*Section 30.*—For the purposes of this Act 'laborer' or 'employee' shall be understood to be any person at the service of any individual, partnership or corporation regularly employing one or more persons under any express or implied service contract, whether verbal or written, and whether such person is man, woman or child; *Provided*, That such laborers or employees working for employers not included in the insurance established in this Act, and those whose labor is of a merely accidental character are expressly excluded.

"The word 'laborer' or 'employee' includes all workmen employed in any manufacturing or agricultural establishment or occupation by any natural or artificial person, for compensation; and by the Insular Government or any of its dependencies, according to the purposes of this Act." (*Laws of Puerto Rico, 1925, p. 946.*)

Sections 25, 48 and 57 of Act. No. 85, approved May 14, 1928.

"*Section 25.*—In case of an accident to a laborer while working for an employer who in violation of

the law is uninsured, the Industrial Commission shall determine proper compensation, plus expenses incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property; * * *" (*Laws of Puerto Rico, 1928, p. 662*).

"*Section 48.*—The provisions of this act shall in no way affect pending litigation relative to workmen's compensation under previous laws." (*Laws of Puerto Rico, 1928, p. 686.*)

"*Section 57.*—All laws or parts of laws in conflict herewith are hereby repealed." (*Laws of Puerto Rico, 1928, p. 696.*)

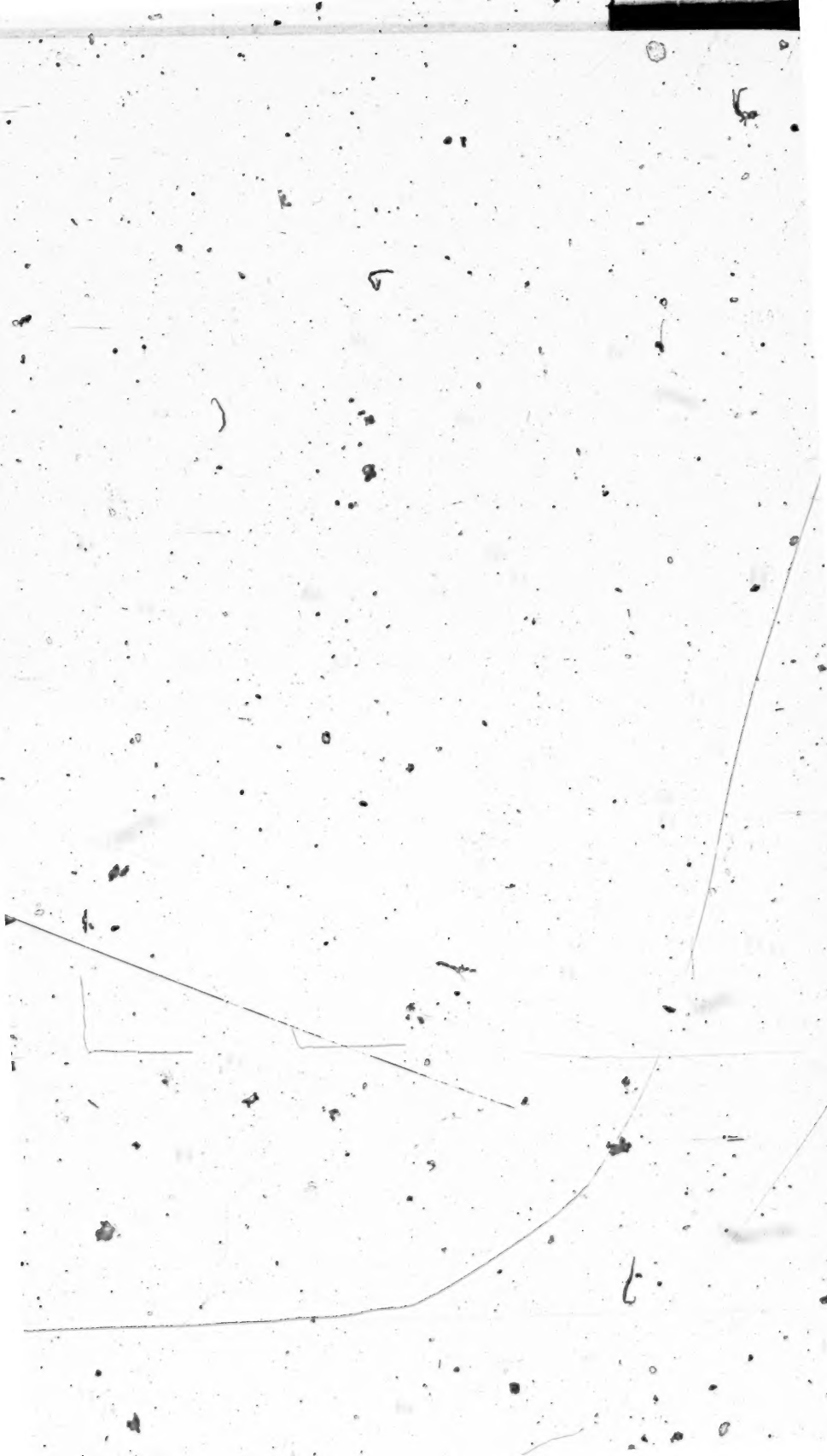
Sections 15, 34 and 51, Act No. 45, approved April 18, 1935.

"*Section 15.*—In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when

it is attached to secure the said compensation and expenses; *Provided, further,* That the Commission shall grant the employer as well as the workman or employee in the case an opportunity to be heard and to defend themselves, conforming as far as possible to the practice observed in the district courts; *And provided, also,* That after the parties have been summoned by such means as the Commission may adopt, should they, or either of them, fail to appear for hearing and defense, it shall be understood that such party or parties waive their rights, and the Commission may decide the case in default, without further delay. * * *" (*Laws of Puerto Rico, 1935, p. 292.*)

"*Section 34.*—The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws." (*Laws of Puerto Rico, 1935, p. 318.*)

"*Section 51.*—Act No. 85, approved May 14, 1928, as subsequently amended, is hereby expressly repealed, with the exception of the provisions in Sections 40 to 47, both inclusive, of this Act, in regard to the decision and liquidation of cases pending under said Act." (*Laws of Puerto Rico, 1935, p. 330.*)



SUPREME COURT OF THE UNITED STATES.

No. 132.—October Term, 1939.

Rafael Sancho Bonet, Treasurer, Petitioner, *vs.* The Texas Company (P. R.), Inc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[January 2, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

Respondent brought this action in a Puerto Rico court to enjoin the Treasurer of Puerto Rico from enforcing by distraint, orders of the Puerto Rico Workmen's Relief Commission awarding compensation for the death of each of three laborers while in the employ of respondent. The Supreme Court of Puerto Rico interpreted the Workmen's Accident Compensation Act of Puerto Rico[1] as not permitting such collateral attack on orders of the Commission and affirmed a judgment dismissing the bill. 52 D. P. R. 658, 53 D. P. R. 475. On appeal (43 Stat. 936) the Circuit Court of Appeals vacated that judgment and remanded the cause with directions to issue the injunction. 102 F. (2d) 710. We granted certiorari because of the asserted violation by the Circuit Court of Appeals of the well established rule that Puerto Rican tribunals must not be overruled on their construction of local statutes in absence of "clear or manifest error." *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505, 307 U. S. 613.

The theory underlying respondent's bill was that it was an insured employer and therefore the awards should have been paid out of the state fund,[2] and that its remedy at law was not adequate. The bill so alleged, and attacked the orders of the Commission adjudging that it was not an insured employer. The cause was submitted, without an answer, on a stipulation which included, *inter alia*, an admission by petitioner of "the ultimate facts of the bill, except the conclusions of fact or of law that it might contain." The Supreme Court of Puerto Rico in effect treated this stipulation

[1] Act No. 102, 1925, as amended by Act No. 85, 1928 and Act No. 45, 1935.

[2] As to the creation of that fund, see §§ 11, 27 of Act No. 102, 1925.

as a demurrer and concluded that petitioner had not thereby admitted that respondent was an insured employer. This seems to have been a reasonable construction—certainly not manifest error.

Treating the bill then as one brought by an uninsured employer, the Supreme Court of Puerto Rico construed the Act on two points: (1) the right of respondent to appeal; (2) the power of petitioner to distrain.

Right to Appeal. It held that respondent had an adequate remedy at law under § 9 of the Act which provided that "the employer may appeal from any decision of the Commission when such decision is to the effect that the accident is one for which compensation is granted under this Act."[3] And it indicated that on such appeal the question of whether or not respondent was uninsured was among the issues which could have been reviewed.[4] The Commission, however, had directed the awards to the Attorney General on April 24, 1928, for collection under § 7 of the Act, a section providing for collection of awards against uninsured employers.[5] But eight years passed and the Attorney General made no attempt to collect. Respondent contended that it did not appeal under § 9 since it was waiting to defend, on the ground that it was insured, an action by the Attorney General under § 7. And though a new method of collection of such awards was created within a few months after these awards were made,[6] respondent contended that

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[3] Act No. 102, 1925, § 9. Thirty days were allowed for perfecting the appeal. *Id.* A comparable provision for review is found in Act No. 85, 1928, § 15, where ten days were allowed; and in Act No. 45, 1935, § 11, where fifteen days are granted.

[4] This point seems to have been first decided by the Supreme Court of Puerto Rico on a writ of certiorari brought by respondent to nullify the orders of the Commission here involved. The court held that the writ did not lie since it applied only to review the actions of courts. 40 P. R. R. 456.

[5] Sec. 7 of Act No. 102, 1925, provided in part:

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum: *Provided, however*, That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice."

[6] Act No. 85, 1928, became effective ninety days after its approval on May 14, 1928. § 58. This Act by § 7 created an Industrial Commission to administer the Act. And by § 25 collection of claims against uninsured employers was provided as follows:

"In case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Industrial Commission shall determine

the new law, in providing that pending litigation was not to be affected,[7] preserved its former opportunity to defend under § 7. To this the Supreme Court of Puerto Rico replied that the purpose of the saving clause in the new act[8] was merely to preserve the rights of workmen to compensation, not to make the new procedure inapplicable to pending cases in contradiction to the well settled rule that procedural statutes are immediately applicable. It also added that in any event the procedure of § 7 had not survived the issuance of the order by the Commission since by the 1935 amendment that procedure was to be "followed in such litigations or claims, until their termination"[9]—the issuance of the orders of the Commission having terminated the case within the meaning of the amendment.

The Circuit Court of Appeals disagreed with this construction of the Act. It held that § 9 gave an appeal only to insured employers and that only § 7 provided for review of orders issued against those who were uninsured. It said that when § 9 stated that "the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act"; it meant that only insured employers could appeal since the compensation granted by the

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proper compensation, plus expenses incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property; *Provided, however,* That the Commissioner shall grant both the employer and the laborer in the case an opportunity to be heard and to defend themselves, and he shall conform, as far as possible, to the practices observed by the district courts."

This procedure, according to the Supreme Court of Puerto Rico, took the place of that provided by § 7 of the 1925 Act, *supra*, note 5, by reason of § 57, "all laws or parts of laws in conflict herewith are hereby repealed."

On September 14, 1936, the Industrial Commission issued an order requesting the petitioner to levy an attachment on properties of respondent.

[7] Act No. 85, 1928, § 48, provided: "The provisions of this Act shall in no way affect pending litigation relative to workmen's compensation under previous laws."

[8] Act No. 45, 1935, § 34, also provided:

"The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure allowed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

[9] *Supra*, note 8.

Act was payment out of the state fund.[10] Hence, in its view, the orders of the Commission here in question were "to the effect" that the accident was not one for which compensation was granted under the Act, since the Commission had adjudged respondent to be uninsured. Consistently with that construction it held that the remedy of an aggrieved uninsured employer was to defend any suit brought under § 7. For in its view, the procedure under § 7 was not abolished by the amendments, the issuance of the orders of the Commission not having terminated the case within the meaning of the saving clause quoted above. Accordingly, it held that unless petitioner were restrained from collecting the awards, respondent would be deprived of its day in court.

Power of Petitioner to Distrain. The Supreme Court of Puerto Rico concluded that petitioner had the power to distrain by virtue of the amendments to the Act made subsequent to the issuance of the orders of award. By the 1928 amendments[11] summary procedure was authorized for collection of a claim "as if it were a tax levied on such property". § 25. Although that phrase was eliminated by the 1935 amendments, § 15 of the latter made such claims "liens preferred over any other charge or lien for taxes or any other cause" with specified exceptions.[12] The court held that since under both the 1928 and 1935 amendments petitioner had the

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[10] The Circuit Court of Appeals referred to § 2 of the 1925 Act which provided in part:

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided*, That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, payable from the government trust fund."

[11] *Supra*, note 6.

[12] Sec. 15 of Act No. 45, 1935, provided in part:

"In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses;" . . .

duty to collect the claims and since under both the claim had the status or legal effect of a tax, the power to distrain survived.

But the Circuit Court of Appeals disagreed with that conclusion. It reasoned that petitioner had no power to collect in that manner since by § 15 of the 1935 amendments the person who was to "determine" the amount of the claim and "certify its decision"[13] to petitioner was the Manager of the State Fund created under that law.[14] That person not being the same as the Workmen's Relief Commission which had issued the orders in question, § 15 was not operative as respects respondent. This reasoning was interwoven with the conclusion of that court that the new procedure provided by the 1928 and 1935 amendments[15] did not reach back to touch pending cases, a result contrary to the opinion of the Supreme Court of Puerto Rico, as we have noted.

The Supreme Court of Puerto Rico, on the other hand, did not reach the precise point determinative of the power of the Manager of the State Fund to certify an award of the former Workmen's Relief Commission apparently because it was tacitly admitted that that power existed,[16] if the remedy provided by former § 7 had been abolished. But however that may be, it did conclude that the Act as amended, though not clear, was designed to give the petitioner power to distrain and that the procedure followed was authorized by law.

For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney* v. *Lomme*, 22 Wall. 208, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co.*, *supra*, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy.[17] As this court recently

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[13] *Supra*, note 12.

[14] Act No. 45, 1935, § 6.

[15] *Supra*, notes 6, 12.

[16] In its motion for reconsideration respondent stated:

"As taxes can be collected by distraint, it is clear that under the law of 1928 the compensations, which were given the same legal priority and effect of taxes, could be collected by distraint. But the Act of 1935 does not give them such legal effect or priority, and only states that the Treasurer shall collect them. That being the case, it shall be taken that he can only collect them by an ordinary action."

[17] In Diaz v. Gonzalez, 261 U. S. 102, 105-106, another Puerto Rico case, Mr. Justice Holmes observed:

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite

stated, "Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island." *Bonet v. Yabucoa Sugar Co., supra,* p. 510.

We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous.

Measured by such a test the judgment of the Supreme Court of Puerto should not have been reversed. In concluding that under § 9 an uninsured employer could have an award of the Commission reviewed, including the issue of whether or not he was insured, the Supreme Court of Puerto Rico did not take a patently absurd position. The most that can be said is that the contrary position is a tenable one. In holding that the amendments substituted collection by the petitioner for collection by the Attorney General even in case of pending claims, that tribunal did not commit manifest error. The conclusion that the latter procedure survived the amendments is merely another possible view. And the decision of that tribunal that the petitioner had the power to distrain[18] cannot be

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De Villanueva *v.* Villanueva, 239 U. S. 293, 299. Nadal *v.* May, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books."

[18] The Supreme Court of Puerto Rico also held that § 243 of the Code of Civil Procedure, barring execution of a judgment for the payment of money after five years from the date of its entry, does not apply to orders of the Commission covering compensation awards, a construction which does not seem to be manifest error.

id to be inescapably wrong in view of the legislative design to ave no hiatus in the statutory scheme as a result of cumulative nendments. The contrary conclusion, though it might seem holly reasonable, would not warrant a reversal.

Intimations that respondent was not accorded due process of law nd that the question of whether or not it was insured was a juris-ictional fact open to collateral attack are untenable. According the Supreme Court of Puerto Rico, respondent had not only an pportunity to be heard before the Commission but also a right of ppeal. The fact that the period for review by appeal was very mited and that on respondent's interpretation of the law its right appeal was uncertain are immaterial. Here, as on other aspects f this case, we cannot say that the conclusion of the Supreme Court f Puerto Rico that under this statute the remedy of respondent at w was adequate is obviously erroneous.

The judgment of the Circuit Court of Appeals is reversed and the dgment of the Supreme Court of Puerto Rico is affirmed.

It is so ordered.

Mr. Justice STONE did not participate in the consideration or dis-osition of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.